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PROCEEDINGS

IN THE

SENATE OF THE UNITED STATES

IN THE MATTER OF THE IMPEACHMENT OF

CHARLES SWAYNE,

JUDGE OF THE DISTRICT COURT OF THE UNITED STATES
IN AND FOR THE NORTHERN DISTRICT
OF FLORIDA.



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PROCEEDINGS IN THE SENATE OF THE UNITED STATES IN
THE MATTER OF THE IMPEACHMENT OF CHARLES SWAYNE,
JUDGE OF THE DISTRICT COURT OF THE UNITED STATES
IN AND FOR THE NORTHERN DISTRICT OF FLORIDA.

IN THE SENATE, *December 14, 1904.*

A message from the House of Representatives, by Mr. W. J. Brown-
ing, its chief clerk, was delivered, as follows:

Mr. President, I am directed by the House of Representatives to
communicate to the Senate the following resolution:

Resolved, That a committee of five be appointed to go to the Senate and, at the bar
thereof, in the name of the House of Representatives and of all the people of the
United States, to impeach Charles Swayne, judge of the district court of the United
States for the northern district of Florida, of high crimes and misdemeanors in office,
and to acquaint the Senate that the House of Representatives will in due time exhibit
particular articles of impeachment against him and make good the same, and that
the committee do demand that the Senate take order for the appearance of said
Charles Swayne to answer said impeachment.

The Speaker announced the appointment of Mr. Palmer, of Pennsylvania; Mr.
Jenkins, of Wisconsin; Mr. Gillett, of California; Mr. Clayton, of Alabama, and Mr.
Smith, of Kentucky, members of said committee.

The Assistant Sergeant-at-Arms (B. W. Layton) announced the
presence of the committee from the House of Representatives.

The PRESIDENT pro tempore. The Senate will receive the commit-
tee from the House of Representatives.

The committee from the House of Representatives was escorted by
the Sergeant-at-Arms (D. M. Ransdell) to the area in front of the
Vice-President's desk, and its chairman, Mr. Palmer, said:

Mr. President, in obedience to the order of the House of Represent-
atives, we appear before you, and in the name of the House of Represent-
atives and of all the people of the United States of America we do
impeach Charles Swayne, judge of the district court of the United
States for the northern district of Florida, of high crimes and misde-
meanors in office; and we do further inform the Senate that the House
of Representatives will in due time exhibit articles of impeachment
against him and make good the same. And in their name we demand
that the Senate shall take order for the appearance of the said Charles
Swayne to answer the said impeachment.

The PRESIDENT pro tempore. Mr. Chairman and gentleman of the
committee of the House of Representatives, the Chair begs to assure
you that the Senate will take proper order in the premises, notice of
which will be given to the House.

The committee of the House of Representatives thereupon retired
from the Chamber.

* * * * *

Mr. PLATT of Connecticut. Mr. President, I present a resolution,
for which I ask immediate consideration.

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The resolution was read, considered by unanimous consent, and agreed to, as follows:

Resolved, That the message of the House of Representatives relating to the impeachment of Charles Swayne be referred to a select committee to consist of five Senators to be appointed by the President pro tempore.

The President pro tempore appointed as the committee Messrs. Platt, of Connecticut; Clark, of Wyoming; Fairbanks, Bacon, and Pettus.

IN THE SENATE, *December 15, 1904.*

Mr. PLATT, of Connecticut. The special committee appointed to consider the message of the House relating to the impeachment of Charles Swayne submit the following report, and ask that the resolution or order may be adopted.

The order was read, considered by unanimous consent, and agreed to, as follows:

Whereas the House of Representatives, on the 14th day of December, 1904, by five of its members (Mr. Palmer, of Pennsylvania; Mr. Jenkins, of Wisconsin; Mr. Gillett, of California; Mr. Clayton, of Alabama, and Mr. Smith, of Kentucky), at the bar of the Senate impeached Charles Swayne, judge of the district court of the United States for the northern district of Florida, of high crimes and misdemeanors in office, and informed the Senate that the House of Representatives will in due time exhibit particular articles of impeachment against him and make good the same; and likewise demanded that the Senate take order for the appearance of the said Charles Swayne to answer the said impeachment: Therefore,

Ordered, That the Senate will, according to its standing rule and orders in such cases provided, take proper order thereon (upon the presentation of the articles of impeachment), of which due notice shall be given to the House of Representatives.

Ordered, That the Secretary acquaint the House of Representatives herewith.

IN THE SENATE, *January 21, 1905.*

A message from the House of Representatives, by Mr. W. J. Browning, announced that the House had agreed to the following resolution:

IN THE HOUSE OF REPRESENTATIVES,
January 21, 1905.

Resolved, That a message be sent to the Senate to inform them that this House have appointed Mr. Palmer, Mr. Powers, of Massachusetts, Mr. Olmsted, Mr. Perkins, Mr. Clayton, Mr. De Armond, and Mr. Smith, of Kentucky, managers to conduct the impeachment against Charles Swayne, judge of the district court of the United States in and for the northern district of Florida, and have directed the said managers to carry to the Senate the articles agreed upon by this House to be exhibited in maintenance of their impeachment against said Charles Swayne, and that the Clerk of the House do go with said message.

Mr. PLATT, of Connecticut. Mr. President, I ask permission at this time to submit an order, and I ask that it be acted upon.

The PRESIDENT pro tempore. The Senator from Connecticut presents an order, and asks for its present consideration. It will be read.

The order was read, and agreed to, as follows:

Ordered, That the Secretary inform the House of Representatives that the Senate is ready to receive the managers appointed by the House for the purpose of exhibiting articles of impeachment against Charles Swayne, judge of the district court of the United States for the northern district of Florida, agreeably to the notice communicated to the Senate.

Mr. TELLER. Mr. President, if I may be allowed to say a word, I should like to say it now, for I believe possibly it may expedite business in the future.

We have just received from the House of Representatives notice that we are to enter upon an impeachment case. I am utterly unacquainted with the character of the charges made against this judge, for I have read only one of them, I think. I expect to sit here as a judge, and I did not care to prejudice my mind in favor of or against the judge by reading the matter when it was pending in another place.

It is our duty now, under the rules of the Senate, to proceed immediately with this impeachment. I have heard it rumored around the Senate Chamber that it was possible we might postpone it until the next session. There can be no support found for that, I think, either in reason or in precedent. We owe it to this judge to give him a trial, in order that if he is not guilty he may be acquitted. We owe it to the people of the district over which he presides to give him a trial, in order that if he is guilty he may be removed from office.

Now, the rules of the Senate require us to proceed, and to proceed at once. Mr. President, for one I am going to insist that we shall take up this impeachment case and proceed with it. We have a bill pending here that I do not suppose anyone on this floor expects to become a law. There is little interest taken in it. During this week, when it has been ably discussed here, a good deal of the time there have not been more than six Senators on the other side of the Chamber and frequently not many more than that number on this side. We have discussed it for hours here without a quorum in the Senate. No one has attempted to delay the bill unnecessarily or unreasonably; and here we are confronted with a duty; and I think the dignity and decency of the Senate require us to take up this case and dispose of it at the earliest day possible.

For one I do not intend that a measure of that kind shall interfere with this hearing, if I can prevent it. We shall be able probably to pass the appropriation bills while we are conducting the case and in the few days that we will have to take in getting ready. We must notify the party who is impeached that he may come here and put in his defense. I suppose he may reasonably ask for a few days to get ready to make that defense. He will probably appear here by lawyers, because the impeaching party will appear here by a commission from the House. I wish to give this note of warning to the Senator who has the statehood bill in charge. I say that measure is of very little consequence compared with the disposition of this case.

For myself, Mr. President, I intend to submit my objections to the admission of Arizona and New Mexico as one State. I expect to submit some objection to the immediate annexation of the Indian Territory to Oklahoma. I should be delighted to vote for the admission of Oklahoma, and I should be delighted to vote for the admission of New Mexico and Arizona as separate States. If the dominant party in the Senate are willing to admit Oklahoma, the Government reserving the right to put on the Indian Territory whenever we think it ought to go on, and are willing to admit New Mexico and Arizona as separate States, I should be glad to join in that effort. I should like to vote for the admission of New Mexico. I think I have voted for its admission at least ten or twelve times in the least twenty-eight years. I think it ought to have been admitted fully fifty years ago.

Mr. PLATT, of Connecticut. Mr. President, I do not know that this is exactly the proper time to discuss the proposed impeachment case. Certainly I think there will be a future time when it will perhaps be more proper to discuss it. In view of what the Senator from Colorado

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said, I thought I would not let the moment pass without assuring him that his apprehensions that the case might be continued to another session of the Senate are without foundation. All the expression I have heard from Senators is to the effect that we ought to proceed with it and conclude it.

Mr. TELLER. I was not alarmed about its being continued, for I know that can not be done by law, but that we might decline to proceed to try the case. We would disgrace ourselves before the world if we declined to proceed with it.

Mr. PLATT, of Connecticut. I do not think the Senator need have any apprehension on that point.

IN THE SENATE, *January 23, 1905.*

Mr. PLATT, of Connecticut. Without displacing the unfinished business, I ask unanimous consent for the reference of the resolution which I send to the Chair.

The resolution was read, and referred to the Committee to Audit and Control the Contingent Expenses of the Senate, as follows:

Resolved, That the expenses incident to the impeachment trial of Charles Swayne, judge for the northern district of Florida, be paid from the contingent fund of the Senate upon vouchers approved by the Sergeant-at-Arms.

IN THE SENATE, *January 24, 1905.*

At 12 o'clock and 30 minutes p. m. the managers of the impeachment, on the part of the House of Representatives, of Judge Charles Swayne appeared below the bar of the Senate, and the Assistant Sergeant-at-Arms (Alonzo H. Stewart) announced their presence as follows:

I have the honor to announce the managers on the part of the House of Representatives, to conduct the impeachment against Charles Swayne, judge of the United States district court for the northern district of Florida.

The PRESIDENT pro tempore. The managers on the part of the House will be received, and the Sergeant-at-Arms will assign them their seats.

The managers were thereupon escorted by the Assistant Sergeant-at-Arms of the Senate to the seats assigned to them in the area in front of the Chair.

The PRESIDENT pro tempore. The Sergeant-at-Arms will make proclamation.

The Sergeant-at-Arms (D. M. Ransdell) made proclamation as follows:

Hear ye! Hear ye! Hear ye! All persons will keep silence, on pain of imprisonment, while the House of Representatives is exhibiting to the Senate of the United States articles of impeachment against Charles Swayne, judge of the district court of the United States for the northern district of Florida.

Mr. Manager PALMER. Mr. President.

The PRESIDENT pro tempore. Mr. Manager.

Mr. Manager PALMER. The managers on the part of the House of Representatives are ready to exhibit articles of impeachment against Charles Swayne, district judge of the United States in and for the

northern district of Florida, as directed by the House, in the words and figures following:

ARTICLE 1. That the said Charles Swayne, at Waco, in the State of Texas, on the twentieth day of April, eighteen hundred and ninety-seven, being then and there a United States district judge in and for the northern district of Florida, did then and there, as said judge, make and present to R. M. Love, then and there being the United States marshal in and for the northern district of Texas, a false claim against the Government of the United States in the sum of two hundred and thirty dollars, then and there knowing said claim to be false, and for the purpose of obtaining payment of said false claim, did then and there, as said judge, make and use a certain false certificate then and there knowing said certificate to be false, said certificate being in the words and figures following:

UNITED STATES OF AMERICA,
Northern District of Texas, ss:

I, Charles Swayne, district judge of the United States for the northern district of Florida, do hereby certify that I was directed to and held court at the city of Waco, in the northern district of Texas, twenty-three days, commencing on the twentieth day of April, eighteen hundred and ninety-seven; also, that the time engaged in holding said court, and in going to and returning from the same, was twenty-three days, and that my reasonable expenses for travel and attendance amounted to the sum of two hundred and thirty dollars and — cents, which sum is justly due me for such attendance and travel.

CHAR. SWAYNE, *Judge.*

WACO, May 15, 1897.

Received of R. M. Love, United States marshal for the northern district of Texas, the sum of two hundred and thirty dollars and no cents, in full payment of the above account.
\$230.

CHAR. SWAYNE.

when in truth and in fact, as the said Charles Swayne then and there well knew, there was then and there justly due the said Swayne from the Government of the United States and from said United States marshal a far less sum, whereby he has been guilty of a high crime and misdemeanor in his said office.

ART. 2. That the said Charles Swayne, having been duly appointed, confirmed, and commissioned as judge of the United States in and for the northern district of Florida, entered upon the duties of his office, and while in the exercise of his office as judge, as aforesaid, the said Charles Swayne was entitled by law to be paid his reasonable expenses for travel and attendance when lawfully directed to hold court outside of the northern district of Florida, not to exceed ten dollars per diem, to be paid upon his certificate by the United States marshal for the district in which the court was held, and was forbidden by law to receive compensation for such services. Yet the said Charles Swayne, well knowing these provisions, falsely certified that his reasonable expenses for travel and attendance were ten dollars per diem while holding court at Tyler, Texas, twenty-four days, commencing December third, nineteen hundred, and seven days going to and returning from said Tyler, Texas, and received therefor from the Treasury of the United States, by the hand of John Grant, the United States marshal for the eastern district of Texas, the sum of three hundred and ten dollars, when the reasonable expenses incurred and paid by the said Charles Swayne for travel and attendance did not amount to the sum of ten dollars per diem.

Wherefore the said Charles Swayne, judge as aforesaid, misbehaved himself and was and is guilty of a high crime, to wit, the crime of obtaining money from the United States by a false pretense and of a high misdemeanor in office.

ART. 3. That the said Charles Swayne, having been duly appointed, confirmed, and commissioned as judge of the United States in and for the northern district of Florida, entered upon the duties of his office, and while in the exercise of his office of judge, as aforesaid, was entitled by law to be paid his reasonable expenses for travel and attendance when lawfully directed to hold court outside of the northern district of Florida, not to exceed ten dollars per diem, to be paid upon his certificate by the United States marshal of the district in which the court was held, and was forbidden by law to receive any compensation for such services. Yet the said Charles Swayne, well knowing these provisions, falsely certified that his reasonable expenses for travel in going to and coming from and attendance were ten dollars per diem while holding court at Tyler, Texas, thirty-five days from January twelve, nineteen hundred and three, and six days going to and returning from said Tyler, Texas, and

received therefor from the Treasury of the United States, by the hand of A. J. Houston, the United States marshal for the eastern district of Texas, the sum of four hundred and ten dollars, when the reasonable expenses of the said Charles Swayne incurred and paid by him during said period were much less than said sum.

Wherefore the said Charles Swayne, judge as aforesaid, misbehaved himself and was and is guilty of a high crime, to wit, obtaining money from the United States by a false pretense, and of a high misdemeanor in office.

ART. 4. That the said Charles Swayne, having been duly appointed, confirmed, and commissioned as judge of the United States in and for the northern district of Florida, entered upon the duties of his office, and while in the exercise of his office of judge as aforesaid, heretofore, to wit, anno Domini eighteen hundred and ninety-three, did unlawfully appropriate to his own use, without making compensation to the owner, a certain railroad car belonging to the Jacksonville, Tampa and Key West Railroad Company, for the purpose of transporting himself, his family, and friends from Guyencourt, in the State of Delaware, to Jacksonville, Florida, the said railroad company being at the time in the possession of a receiver appointed by said Charles Swayne, judge as aforesaid, on the petition of creditors.

The said car was supplied with provisions by the said receiver, which were consumed by said Swayne and his friends, and was provided with a conductor or porter at the cost and expense of said railroad company, and with transportation over connecting lines. The expenses of the trip were paid by the said receiver out of the funds of the said Jacksonville, Tampa and Key West Railroad Company, and the said Charles Swayne, acting as judge, allowed the credit claimed by the said receiver for and on account of the said expenditure as a part of the necessary expenses of operating said road. The said Charles Swayne, judge as aforesaid, used the said property without making compensation to the owner, and under a claim of right, for the reason that the same was in the hands of a receiver appointed by him.

Wherefore the said Charles Swayne, judge as aforesaid, was and is guilty of an abuse of judicial power and of a high misdemeanor in office.

ART. 5. That the said Charles Swayne was duly appointed, commissioned, and confirmed as judge of the United States in and for the northern district of Florida, and entered upon the duties of said office, and while in the exercise of his office of judge, as aforesaid, heretofore, to wit, anno Domini eighteen hundred and ninety-three, did unlawfully appropriate to his own use, without making compensation to the owner, a certain railroad car belonging to the Jacksonville, Tampa and Key West Railroad Company, for the purpose of transporting himself, his family, and friends from Jacksonville, Florida, to California, said railroad company being at the time in the possession of a receiver appointed by the said Charles Swayne, judge as aforesaid, on the petition of creditors.

The car was supplied with some provisions by the said receiver, which were consumed by the said Swayne and his friends, and it was provided with a porter at the cost and expense of the railroad company, and also with transportation over connecting lines. The wages of said porter and the cost of said provisions were paid by the said receiver out of the funds of the Jacksonville, Tampa and Key West Railroad Company, and the said Charles Swayne, acting as judge as aforesaid, allowed the credits claimed by the said receiver for and on account of the said expenditures as a part of the necessary expenses of operating the said railroad. The said Charles Swayne, judge as aforesaid, used the said property without making compensation to the owner under a claim of right, alleging that the same was in the hands of a receiver appointed by him and he, therefore, had a right to use the same.

Wherefore, the said Charles Swayne, judge as aforesaid, was and is guilty of an abuse of judicial power and of high misdemeanor in office.

ART. 6. That the said Charles Swayne, having been duly appointed and confirmed, was commissioned district judge of the United States in and for the northern district of Florida on the first day of April, anno Domini eighteen hundred and ninety, to serve during good behavior, and thereafter, to wit, on the twenty-second day of April, anno Domini eighteen hundred and ninety, took the oath of office and assumed the duties of his appointment, and established his residence at the city of Saint Augustine, in the State of Florida, which was at that time within the said northern district. That subsequently, by an act of Congress approved the twenty-third of July, anno Domini eighteen hundred and ninety-four, the boundaries of the said northern district of Florida were changed, and the city of Saint Augustine and contiguous territory were transferred to the southern district of Florida; whereupon it became and was the duty of the said Charles Swayne to change his residence and reside in the northern district of Florida and to comply with the five hundred and fifty-first section of the Revised Statutes of the United States, which provides that—

"A district judge shall be appointed for each district, except in cases hereinafter provided. Every judge shall reside in the district for which he is appointed, and for offending against this provision shall be deemed guilty of a high misdemeanor."

Nevertheless the said Charles Swayne, judge as aforesaid, did not acquire a residence, and did not, within the intent and meaning of said act, reside in his said district, to wit, the northern district of Florida, from the twenty-third day of July, anno Domini eighteen hundred and ninety-four, to the first day of October, anno Domini nineteen hundred, a period of about six years.

Wherefore the said Charles Swayne, judge as aforesaid, willfully and knowingly violated the aforesaid law, and was and is guilty of a high misdemeanor in office.

ART. 7. That the said Charles Swayne, having been duly appointed and confirmed, was commissioned district judge of the United States in and for the northern district of Florida on the first day of April, anno Domini eighteen hundred and ninety, to serve during good behavior, and thereafter, to wit, on the twenty-second day of April, anno Domini eighteen hundred and ninety, took the oath of office and assumed the duties of his appointment, and established his residence at the city of Saint Augustine, in the State of Florida, which was at that time within the said northern district. That subsequently, by an act of Congress of the United States approved the twenty-third day of July, anno Domini eighteen hundred ninety-four, the boundaries of the said northern district of Florida, were changed, and the city of Saint Augustine, with the contiguous territory, was transferred to the southern district of Florida, whereupon it became and was the duty of the said Charles Swayne to change his residence and reside in the northern district of Florida, as defined by said act of Congress, and to comply with section five hundred and fifty-one of the Revised Statutes of the United States, which provides that—

“A district judge shall be appointed for each district, except in cases hereinafter provided. Every judge shall reside in the district for which he is appointed, and for offending against this provision shall be deemed guilty of a high misdemeanor.”

Nevertheless, the said Charles Swayne, judge as aforesaid, totally disregarding his duty as aforesaid, did not acquire a residence, and within the intent and meaning of said act did not reside in his said district, to wit, the northern district of Florida, from the twenty-third day of July, anno Domini eighteen hundred and ninety-four, to the first day of January, anno Domini nineteen hundred and three, a period of about nine years.

Wherefore, the said Charles Swayne, judge as aforesaid, willfully and knowingly violated the aforesaid law, and was and is guilty of a high misdemeanor in office.

ART. 8. That the said Charles Swayne, having been appointed, confirmed, and duly commissioned as judge of the district court of the United States in and for the northern district of Florida, entered upon the duties of said office, and while in the exercise of his office as judge as aforesaid, to wit, while performing the duties of a judge of a circuit court of the United States, heretofore, to wit, on the twelfth day of November, anno Domini nineteen hundred and one, at the city of Pensacola, in the county of Escambia, in the State of Florida, did maliciously and unlawfully adjudge guilty of a contempt of court and impose a fine of one hundred dollars upon and commit to prison for a period of ten days E. T. Davis, an attorney and counselor at law, for an alleged contempt of the circuit court of the United States.

Wherefore the said Charles Swayne, judge as aforesaid, misbehaved himself in his office of judge, and was and is guilty of an abuse of judicial power and of a high misdemeanor in office.

ART. 9. That the said Charles Swayne, having been appointed, confirmed, and duly commissioned as judge of the district court of the United States in and for the northern district of Florida, entered upon the duties of said office, and while in the exercise of his office as judge as aforesaid, to wit, while performing the duties of a judge of a circuit court of the United States, heretofore, to wit, on the twelfth day of November, anno Domini nineteen hundred and one, at the city of Pensacola, in the county of Escambia, in the State of Florida, did knowingly and unlawfully adjudge guilty of a contempt of court and impose a fine of one hundred dollars upon and commit to prison for a period of ten days E. T. Davis, an attorney and counselor at law, for an alleged contempt of the circuit court of the United States.

Wherefore the said Charles Swayne, judge as aforesaid, misbehaved himself in his office as judge, and was and is guilty of an abuse of judicial power and of a high misdemeanor in office.

ART. 10. That the said Charles Swayne, having been appointed, confirmed, and duly commissioned as judge of the district court of the United States in and for the northern district of Florida, entered upon the duties of said office, and while in the exercise of his office as judge as aforesaid, to wit, while performing the duties of a judge of a circuit court of the United States, heretofore, to wit, on the twelfth day of November, anno Domini nineteen hundred and one, at the city of Pensacola, in the county of Escambia, in the State of Florida, did maliciously and unlawfully adjudge guilty of a contempt of court and impose a fine of one hundred dollars upon and commit to prison for a period of ten days Simeon Belden, an attorney and counselor at law, for an alleged contempt of the circuit court of the United States.

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Wherefore the said Charles Swayne, judge as aforesaid, misbehaved himself in his office of judge, and was and is guilty of an abuse of judicial power, and of a high misdemeanor in office.

ART. 11. That the said Charles Swayne, having been appointed, confirmed, and duly commissioned as judge of the district court of the United States in and for the northern district of Florida, entered upon the duties of said office, and while in the exercise of his office as judge as aforesaid, to wit, while performing the duties of a circuit judge of the United States heretofore, to wit, on the twelfth day of November, anno Domini nineteen hundred and one, at the city of Pensacola, in the county of Escambia, in the State of Florida, did knowingly and unlawfully adjudge guilty of contempt of court and impose a fine of one hundred dollars upon and commit to prison for a period of ten days Simeon Belden, an attorney and counselor at law, for an alleged contempt of the circuit court of the United States.

Wherefore the said Charles Swayne, judge as aforesaid, misbehaved himself in his office as judge, and was and is guilty of an abuse of judicial power, and of a high misdemeanor in office.

ART. 12. That the said Charles Swayne, having been duly appointed, confirmed, and commissioned as judge of the United States in and for the northern district of Florida, entered upon the duties of his office, and while in the exercise of his office of judge, heretofore, to wit, on the ninth day of December, anno Domini nineteen hundred and two, at Pensacola, in the county of Escambia, in the State of Florida, did unlawfully and knowingly adjudge guilty of contempt, and did commit to prison for the period of sixty days, one W. C. O'Neal, for an alleged contempt of the district court of the United States for the northern district of Florida.

Wherefore the said Charles Swayne, judge as aforesaid, misbehaved himself in his office of judge, as aforesaid, and was and is guilty of an abuse of judicial power, and of a high misdemeanor in office.

And the House of Representatives by protestation, saving to themselves the liberty of exhibiting at any time hereafter any further articles of accusation or impeachment against the said Charles Swayne, judge of the United States court for the northern district of Florida, and also of replying to his answers which he shall make unto the articles herein preferred against him, and of offering proof to the same and every part thereof, and to all and every other article or accusation or impeachment which shall be exhibited by them as the case shall require, do demand that the said Charles Swayne may be put to answer the high crimes and misdemeanors in office herein charged against him, and that such proceedings, examinations, trials, and judgments may be thereupon had and given as may be agreeable to law and justice.

J. G. CANNON,

Speaker of the House of Representatives.

Attest:

A. McDOWELL,

Clerk.

The articles of impeachment were handed to the Secretary of the Senate.

The PRESIDENT pro tempore. The Senate will take proper order in the matter of the impeachment of Judge Swayne, and communicate to the House of Representatives its action.

The managers thereupon withdrew from the Chamber.

Mr. PLATT, of Connecticut. I submit the order which I send to the desk and ask that it be now considered.

The PRESIDENT pro tempore. The order will be read.

The order was read, considered by unanimous consent, and agreed to, as follows:

Ordered, That the articles of impeachment presented this day by the House of Representatives be printed for the use of the Senate.

Mr. PLATT, of Connecticut. I submit the order which I send to the desk, for which I ask present consideration.

The PRESIDENT pro tempore. The order submitted by the Senator from Connecticut will be read.

The order was read, considered by unanimous consent, and agreed to, as follows:

Ordered, That at 2 o'clock this afternoon the Senate will proceed to the consideration of the articles of impeachment of Charles Swayne, judge of the United States district court for the northern district of Florida, presented this day.

Mr. FAIRBANKS. I ask for the present consideration of the order which I send to the desk.

The PRESIDENT pro tempore. The order will be read.

The order was read, considered by unanimous consent, and agreed to, as follows:

Ordered, That a committee of two Senators be appointed by the Chair to wait upon the Chief Justice of the United States and invite him to attend in the Senate Chamber at 2 o'clock this day, to administer to Senators the oath required by the Constitution, in the matter of the impeachment of Charles Swayne, or in case of his inability to attend, any one of the associate justices.

The PRESIDENT pro tempore. In pursuance of the order just adopted, the Chair appoints as the committee to wait on the Chief Justice the Senator from Indiana [Mr. Fairbanks] and the Senator from Georgia [Mr. Bacon].

* * * * *

The PRESIDENT pro tempore. Senators, thirty-two or thirty-three working days remain of this short session, and the impeachment trial of Judge Swayne must be proceeded with to a conclusion; also absolutely necessary legislation must be enacted. The duties of the Presiding Officer, whether the Senate sit as a court or as a legislative body, will be very arduous and exacting. I have not yet quite recovered from my recent illness, and I have serious doubts whether my strength would be sufficient to perform satisfactorily to you or to myself these double duties.

In justice to the Senate sitting as a court, where the proceedings certainly ought not to be delayed or interrupted, and to myself, I ask that the Senate will select a Senator to preside over the proceedings while the Senate is a court, and that I be permitted to preside in the legislative and executive sessions.

Mr. SPOONER. Mr. President, I offer the following resolution, for which I ask immediate consideration.

The PRESIDENT pro tempore. The Senator from Wisconsin offers a resolution, which will be read.

The resolution was read as follows:

Resolved, That in view of the statement just made to the Senate by the President pro tempore of his inability, because of recent illness, to discharge the duties of his office, other than those involved in presiding over the Senate in legislative and executive session, the Hon. Orville H. Platt, Senator from the State of Connecticut, be, and he is hereby, appointed presiding officer on the trial of the impeachment of Charles Swayne, district judge of the United States for the northern district of Florida.

The PRESIDENT pro tempore. Is there objection to the present consideration of the resolution?

The resolution was considered by unanimous consent and agreed to.

* * * * *

Mr. ALLISON. I introduce at this time a joint resolution and ask that it may be read. I will then ask unanimous consent that it be considered now.

The joint resolution (S. R. 97) providing for the payment of the expenses of the Senate in the impeachment trial of Charles Swayne was read the first time by its title and the second time at length, as follows:

Resolved, etc., That there be appropriated from any money in the Treasury not otherwise appropriated the sum of \$40,000, or so much thereof as may be necessary, to defray the expenses of the Senate in the impeachment trial of Charles Swayne.

The PRESIDENT pro tempore. Is there objection to the consideration of the joint resolution?

There being no objection, the joint resolution was considered as in Committee of the Whole.

The joint resolution was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

* * * * *

Mr. PLATT, of Connecticut (at 2 o'clock p. m.). It may be a mere matter of formality, but Rule III of the Rules of Procedure and Practice in the Senate when sitting on impeachment trials provides that the Presiding Officer shall administer the oath therein provided to the members of the Senate when sitting in impeachment trials. I ask unanimous consent that the rule be suspended.

The PRESIDENT pro tempore. Is there objection? The Chair hears none, and the rule is suspended.

The presence of the Chief Justice of the United States, Hon. Melville W. Fuller, was announced by the Assistant Sergeant-at-Arms.

The Chief Justice entered the Senate Chamber, escorted by Mr. Fairbanks and Mr. Bacon, the committee appointed for the purpose, and was conducted by them to a seat by the side of the President pro tempore.

Mr. FAIRBANKS. Mr. President, the committee appointed by the Senate to wait upon the Chief Justice of the Supreme Court of the United States and request him to administer to Senators the oath required by the Constitution in the matter of the impeachment of Judge Charles Swayne, report that they have discharged that duty. The Chief Justice of the Supreme Court, complying with the request of the Senate, is now present in the Senate and ready to administer the oath required to be administered to the members of the Senate sitting in the trial of impeachments.

The Chief Justice administered the oath to the President pro tempore as follows:

You do solemnly swear that in all things appertaining to the trial of the impeachment of Charles Swayne, judge of the district court of the United States for the northern district of Florida, now pending, you will do impartial justice according to the Constitution and laws. So help you God.

The PRESIDENT pro tempore. The Senator from Connecticut will please present himself as Presiding Officer of the Senate while in court and take the necessary oath.

Mr. PLATT, of Connecticut, advanced to the Vice-President's desk, and the oath was administered to him by the Chief Justice.

The PRESIDENT pro tempore. The Secretary will call the roll, and as their names are called Senators will present themselves at the desk in groups of ten, and the oath will be administered to them.

The Secretary called the names of Messrs. Aldrich, Alger, Allee, Allison, Ankeny, Bacon, Bailey, Ball, Bard, and Bate, and these Sena-

tors, with the exception of Mr. Aldrich, advanced to the area in front of the Vice-President's desk, and the oath was administered to them by the Chief Justice.

The Secretary called the names of Messrs. Berry, Beveridge, Blackburn, Burnham, Burrows, Burton, Carmack, Clapp, Clark, of Montana, and Clark, of Wyoming, and these Senators, with the exception of Mr. Blackburn, Mr. Burton, and Mr. Clark, of Wyoming, appeared, and the oath was administered to them by the Chief Justice.

The Secretary called the names of Messrs. Clarke, of Arkansas, Clay, Cockrell, Crane, Culberson, Cullom, Daniel, Depew, Dick, and Dietrich, and these Senators, with the exception of Mr. Culberson, Mr. Daniel, and Mr. Depew, appeared, and the oath was administered to them by the Chief Justice.

The Secretary called the names of Messrs. Dillingham, Dolliver, Dryden, Dubois, Elkins, Fairbanks, Foraker, Foster, of Louisiana, Foster, of Washington, and Fulton, and these Senators, with the exception of Mr. Dryden and Mr. Foster, of Washington, appeared, and the oath was administered to them by the Chief Justice.

The Secretary called the names of Messrs. Gallinger, Gamble, Gibson, Gorman, Hale, Hansbrough, Hawley, Heyburn, Hopkins, and Kean, and these Senators, with the exception of Mr. Hawley, appeared, and the oath was administered to them by the Chief Justice.

Mr. PLATT, of Connecticut. I desire to announce that my colleague, Mr. Hawley, is detained at home by illness.

The Secretary called the names of Messrs. Kearns, Kittridge, Knox, Latimer, Lodge, Long, McComas, McCreary, McCumber, and McEnery, and these Senators, with the exception of Mr. Knox, appeared, and the oath was administered to them by the Chief Justice.

Mr. PENROSE. I desire to announce that my colleague [Mr. Knox] is absent from the city.

The Secretary called the names of Messrs. McLaurin, Mallory, Martin, Millard, Mitchell, Money, Morgan, Nelson, Newlands, and Overman, and these Senators, with the exception of Mr. McLaurin and Mr. Mitchell, appeared, and the oath was administered to them by the Chief Justice.

The Secretary called the names of Messrs. Patterson, Penrose, Perkins, Pettus, Platt of New York, Proctor, Quarles, Scott, Simmons, and Smoot, and these Senators, with the exception of Mr. Quarles and Mr. Scott, appeared, and the oath was administered to them by the Chief Justice.

The Secretary called the names of Messrs. Spooner, Stewart, Stone, Taliaferro, Teller, Tillman, Warren, and Wetmore, and these Senators, with the exception of Mr. Tillman, appeared, and the oath was administered to them by the Chief Justice.

Mr. LATIMER. My colleague [Mr. Tillman] is prevented from attending the session of the Senate on account of sickness.

Mr. DANIEL appeared, and the oath was administered to him by the Chief Justice.

Mr. SCOTT appeared, and the oath was administered to him by the Chief Justice.

Mr. KEAN. My colleague [Mr. Dryden] is necessarily absent from the Senate.

Mr. PLATT, of New York. I beg to announce that my colleague [Mr. Depew] is absent from the city.

The PRESIDENT pro tempore. The oath has been administered to all Senators who are now present.

Mr. BAILEY. Mr. President, I presume, although the roll was not called, so that Senators could answer to their names, nevertheless the proper officers of the Senate have recorded the Senators who are present and who have taken the oath, and that it will appear that certain Senators have not taken the oath. Among those Senators is my colleague [Mr. Culberson], who is now absent in attendance upon the legislature of the State of Texas, and I desire that announcement to appear.

The PRESIDENT pro tempore. Whenever an absent Senator shall announce his presence, the oath will be administered to him.

Mr. WETMORE. I desire to announce the unavoidable absence of my colleague [Mr. Aldrich].

The Chief Justice withdrew from the Chamber, escorted by Mr. Fairbanks and Mr. Bacon.

Mr. PLATT, of Connecticut. Mr. President, in order that the record may be complete, I ask that the names of those Senators who have not appeared and taken the oath may be called.

The PRESIDENT pro tempore. The names of Senators who have not taken the oath will now be called.

The Secretary called the names of absent Senators, as follows:

Messrs. Aldrich, Blackburn, Burton, Clark, of Wyoming, Culberson, Depew, Dryden, Foster, of Washington, Hawley, Knox, McLaurin, Mitchell, Quarles, and Tillman.

The PRESIDENT pro tempore. The Senator from Connecticut [Mr. Platt] will now please take the chair.

Mr. Platt, of Connecticut, thereupon took the chair.

The PRESIDING OFFICER (Mr. Platt, of Connecticut). Senators, the Senate is now sitting for the trial of the impeachment of Charles Swayne, judge of the United States district court in and for the northern district of Florida.

Mr. FAIRBANKS. Mr. President, I offer the order which I send to the desk, and ask for its present consideration.

The PRESIDING OFFICER. The order submitted by the Senator from Indiana will be read.

The order was read, as follows:

Ordered, That the Secretary notify the House of Representatives that the Senate is now organized for the trial of articles of impeachment against Charles Swayne, judge of the United States district court for the northern district of Florida, and is ready to receive the managers on the part of the House at its bar.

The PRESIDING OFFICER. If there be no objection, the order will be now considered. The question is on its adoption. [Putting the question.] The order is agreed to. The Secretary will so inform the House of Representatives.

Senators, the Chair is sure it will not be out of place for him to speak of the absolute importance that all Senators who have been sworn shall be in their seats during the entire proceedings of the impeachment trial. Even committee work ought to be suspended during the hours when the impeachment trial shall be proceeding. The Chair thought it proper to speak of this at the present time and to express the hope that all Senators may be present during the proceedings.

At 2 o'clock and 27 minutes p. m. the managers of the impeachment on the part of the House of Representatives appeared at the bar, and their presence was announced by the Sergeant-at-Arms.

The PRESIDING OFFICER. The Sergeant-at-Arms will conduct the managers to the seats provided for them within the bar of the Senate.

The managers were conducted to the seats assigned them within the space in front of the Secretary's desk.

The PRESIDING OFFICER. Gentlemen managers, the Senate is now organized for the trial of the impeachment of Charles Swayne, United States judge in and for the northern district of Florida.

Mr. Manager Palmer rose and said: Mr. President, we are instructed by the House of Representatives, as its managers, to demand that the Senate shall issue process against Charles Swayne, district judge of the United States in and for the northern district of Florida, that he answer at the bar of the Senate the articles of impeachment heretofore exhibited by the House of Representatives through its managers.

Mr. FAIRBANKS. Mr. President, I propose the order which I send to the desk, and I ask for its immediate consideration.

The PRESIDING OFFICER. The order will be read.

The order was read, considered by unanimous consent, and agreed to, as follows:

Ordered, That a summons be issued, as required by the rules of procedure and practice in the Senate when sitting for the trial of impeachment of Charles Swayne, returnable on Friday, the 27th day of the present month, at 1 o'clock in the afternoon.

Mr. FAIRBANKS. Mr. President, I present another order, which I send to the desk, and for which I ask immediate consideration.

The order was read, considered by unanimous consent, and agreed to, as follows:

Ordered, That the Senate, sitting for the trial of impeachment of Charles Swayne, adjourn until Friday, the 27th instant, at 1 o'clock in the afternoon.

The PRESIDING OFFICER. The order having been agreed to, the Senate, sitting for the trial of the impeachment, stands adjourned until 1 o'clock on Friday, the 27th instant. The Senate will resume its legislative session.

Mr. Platt, of Connecticut, thereupon vacated the chair, which was resumed by the President pro tempore.

* * * * *

Mr. SPOONER. Mr. President, the rules of the Senate governing the sessions of the Senate when it is sitting in the trial of impeachments seem to draw a distinction between the Presiding Officer of the Senate and the Presiding Officer on the trial. Rule V provides:

V. The Presiding Officer shall have power to make and issue, by himself or by the Secretary of the Senate, all orders, mandates, writs, and precepts authorized by these rules, or by the Senate, and to make and enforce such other regulations and orders in the premises as the Senate may authorize or provide.

The forms of summonses and subpoenas are all signed by the Presiding Officer of the Senate. In order to remove all possible question as to who shall sign the mandates of the Senate, including subpoenas, I offer the resolution which I send to the desk, and ask unanimous consent for its present consideration.

The PRESIDENT pro tempore. The resolution will be read.

The Secretary read as follows:

Resolved, That the Presiding Officer on the trial of the impeachment of Charles Swayne, judge of the United States in and for the northern district of Florida, be, and is hereby, authorized to sign all orders, mandates, writs, and precepts authorized by the rules of procedure and practice in the Senate, when sitting on impeachment trials, and by the Senate.

The PRESIDENT pro tempore. Is there objection to the present consideration of the resolution? The Chair hears none, and the resolution is before the Senate.

Mr. BACON. Before the resolution is agreed to I should like to ask the Senator from Wisconsin if it is not a fact that throughout the rules there is some ambiguity, if I may so speak, and would it not be well to make Rule V broad enough, not only to cover the particular function mentioned in that rule, but all other duties which are connected with impeachment trials after the organization of the court, which in the rules generally are delegated to the Presiding Officer, without stating whether he is the Presiding Officer of the Senate or the Presiding Officer of the court?

Mr. SPOONER. Mr. President, the whole matter seems to me to be in the power of the Senate. The Constitution invests each House with the power, without limit, to make its own rules of procedure. Under the Constitution the function of trying impeachment cases devolves upon the Senate, and the provision of the Constitution must be construed as authorizing the Senate to make the rules which it may deem necessary for the proper discharge of all of the duties and functions devolved upon it by the Constitution. The Senate has, I think, within its power and with perfect propriety under the circumstances, appointed a Senator to preside, using the language of the rule, to be "the presiding officer on the trial." That clearly vests in him the functions, as I think, of passing upon the admissibility of evidence and upon the various questions which may arise in the course of the trial.

This question is one which must be determined at once, for a summons is to be issued to Judge Swayne to appear, and it is important, of course, that there shall be no doubt that the officer signing the summons has the power to do so.

The rules need revision anyway. In several particulars I think they are a little inconsistent, and in some particulars quite blind.

Mr. BACON. And in others quite uncertain.

Mr. SPOONER. Yes. But there is no time now to enter upon a revision of the rules, so I hope the Senator will allow us by this resolution, which clearly covers it, to meet the particular necessity which now confronts us.

Mr. BACON. Mr. President, I recognize fully the absolute correctness of everything which the Senator from Wisconsin has stated.

Mr. SPOONER. If the Senator will allow me there—

Mr. BACON. If the Senator will pardon me, I do not wish that the remarks I have so far made should be misunderstood by others. I do not disagree with him in anything he has said; on the contrary, as I have stated, I recognize fully the correctness of everything which he has said. My purpose was not to interfere in any manner with what it is proposed to do by his amendment to the rules, but knowing the fact of their ambiguity and uncertainty and conflicting clauses, it occurred to me that possibly some general language might be used which would not only cover this particular necessity, but which would

cover all, so far as to vest within the power of the Presiding Officer on the trial, whom we have selected, all the powers which are exercised after the organization of the court and which are conferred under the rules generally on the Presiding Officer. But if the Senator thinks that the rule originally adopted, by which we conferred certain powers upon the Senator from Connecticut [Mr. Platt] as the Presiding Officer, are sufficient to cover the general features which I have in mind, and that it would be better simply to have this specific rule as to this specific function, of course I will not urge the matter.

Mr. SPOONER. It is my impression, Mr. President, that there is no absolute necessity for the adoption of this resolution. I think probably "the Presiding Officer of the Senate" means "the Presiding Officer of the Senate sitting as an impeachment tribunal," but there is a question about it.

Now, if the Senator will turn to Rule VII—

Mr. BACON. I have it before me.

Mr. SPOONER. It provides:

VII. The Presiding Officer of the Senate shall direct all necessary preparations in the Senate Chamber, and the Presiding Officer on the trial shall direct all the forms of proceedings while the Senate are sitting for the purpose of trying an impeachment, and all forms during the trial not otherwise specially provided for. And the Presiding Officer on the trial may rule all questions of evidence and incidental questions, which ruling shall stand as the judgment of the Senate, unless some member of the Senate shall ask that a formal vote be taken thereon, in which case it shall be submitted to the Senate for decision, etc.

Ordinarily the Presiding Officer of the Senate would be the Presiding Officer of the trial.

Mr. BACON. If the Senator will pardon me, of course I do not wish to interfere with this particular order, but, as we have the subject before us for the moment, I may say the difficulty is that while Rule VII itself differentiates between the Presiding Officer of the Senate and the Presiding Officer on the trial, there are other rules, Rule V, for instance, in which there is no such differentiation, and in which the simple designation "Presiding Officer" is had.

Mr. SPOONER. The resolution I have submitted is applied to Rule V. It clears Rule V, or is intended to do so.

Mr. BACON. Rule VII speaks of the Presiding Officer of the Senate and of the Presiding Officer on the trial, whereas Rule V only speaks of the Presiding Officer, without stating which one it is. While under some proper rule of construction it may be legitimate to draw the conclusion which the Senator does, Rule VII does make that clear. It is very much better, in my opinion, that it should be specified rather than left to a question of construction, but I do not insist upon it at this time. I quite agree with the Senator that the rules should be revised, but this is not the proper time to do it. We can get along with what we have now.

Mr. SPOONER. In this particular matter it must be made absolutely clear that if one is summoned or subpoenaed to appear and refuses to do so, it is necessary that there shall be no doubt about the power of the officer who sent the process to sign it.

Mr. BACON. The Senator is entirely correct in that.

Mr. SPOONER. I hope the resolution may be passed at this time. The resolution was unanimously agreed to.

IN THE SENATE, *January 27, 1905.*

The PRESIDENT pro tempore. The hour of 1 o'clock, to which the Senate sitting as a court in the impeachment of Judge Charles Swayne adjourned, has arrived. Will the Senator from Connecticut [Mr. Platt] please take the chair?

Mr. Platt, of Connecticut, thereupon took the chair as presiding officer.

The PRESIDING OFFICER. The Sergeant-at-Arms will make the opening proclamation.

The SERGEANT-AT-ARMS. Hear ye! Hear ye! Hear ye! All persons are commanded to keep silence on pain of imprisonment while the Senate of the United States is sitting for the trial of the articles of impeachment exhibited by the House of Representatives against Charles Swayne, judge of the district court of the United States in and for the northern district of Florida.

The PRESIDING OFFICER. The Secretary will now call the names of those Senators who have not been sworn, and such of those Senators as are present in the Chamber will, as their names are called, advance to the desk and take the oath.

The Secretary called the names of the Senators who had not been heretofore sworn, whereupon Senators Blackburn, Depew, Dryden, Knox, and McLaurin advanced to the area in front of the Secretary's desk, and the oath was administered to them by the Presiding Officer.

Mr. FAIRBANKS. I offer the resolution which I send to the desk, for which I ask present consideration.

The resolution was read, considered by unanimous consent, and agreed to, as follows:

Resolved, That the Secretary inform the House of Representatives that the Senate is sitting in its Chamber and ready to proceed with the trial of the impeachment of Charles Swayne.

At 1 o'clock and 7 minutes p. m. the Assistant Sergeant-at-Arms announced the managers on the part of the House of Representatives.

The PRESIDING OFFICER. The managers will be admitted and conducted to the seats provided for them within the bar of the Senate.

The managers were conducted to seats provided in the space in front of the Secretary's desk on the left of the Chair, namely: Hon. Henry W. Palmer, of Pennsylvania; Hon. Marlin E. Olmsted, of Pennsylvania; Hon. James B. Perkins, of New York; Hon. Henry D. Clayton, of Alabama; Hon. David A. De Armond, of Missouri, and Hon. David H. Smith, of Kentucky.

At 1 o'clock and 14 minutes p. m. Hon. Anthony Higgins and Hon. John M. Thurston, counsel for the respondent, Charles Swayne, entered the Senate Chamber and were conducted to the seats assigned them in the space in front of the Secretary's desk, on the right of the Chair.

The PRESIDING OFFICER. The Secretary will read the minutes of the proceedings of the last session of the Senate while sitting in the trial of the impeachment of Charles Swayne.

The Secretary read the Journal of proceedings of the Senate, sitting for the trial of the impeachment, of Tuesday, January 24, 1905.

The PRESIDING OFFICER. The Secretary will now read the return of the Sergeant-at-Arms to the summons directed to be served.

The Secretary read the following return appended to the writ of summons:

The foregoing writ of summons, addressed to Charles Swayne, and the foregoing precept, addressed to me, were duly served upon the said Charles Swayne by delivery

to and leaving with him true and attested copies of the same at 1215 Tatnall street, Wilmington, Del., the residence of Henry G. Swayne, on Tuesday, the 24th day of January, 1905, at 7 o'clock and 45 minutes in the afternoon of that day.

DANIEL M. RANDELL,
Sergeant-at-Arms United States Senate.

The PRESIDING OFFICER. The Secretary will now administer to the Sergeant-at-Arms an oath in support of the truth of his return.

The Secretary (Mr. Charles G. Bennett) administered the following oath to the Sergeant-at-Arms:

You, Daniel M. Ransdell, Sergeant-at-Arms of the Senate of the United States, do solemnly swear that the return made by you upon the process issued on the 24th day of January, 1905, by the Senate of the United States against Charles Swayne, is truly made, and that you have performed such service as therein described. So help you God.

The SERGEANT-AT-ARMS. I do so swear.

The PRESIDING OFFICER. The Sergeant-at-Arms will make proclamation.

The SERGEANT-AT-ARMS. Charles Swayne, Charles Swayne, Charles Swayne, judge of the district court of the United States for the northern district of Florida: Appear and answer to the articles of impeachment exhibited by the House of Representatives against you.

Mr. HIGGINS. Mr. President, on behalf of the respondent, Charles Swayne, I beg to enter the following appearance:

To the Honorable the Senate of the United States, sitting as a Court of Impeachment:

I, Charles Swayne, judge of the district court of the United States in and for the northern district of Florida, now present in the city of Washington, having been served with a summons to be in the city of Washington on the 27th day of January, 1905, at 1 o'clock afternoon, to answer certain articles of impeachment presented against me by the honorable the House of Representatives of the United States, do hereby enter my appearance by my counsel, Anthony Higgins and John M. Thurston, who have my warrant and authority therefor, and who are instructed by me to ask this court for a reasonable time for the preparation of my answer to said articles.

CHARLES SWAYNE.

Dated at Washington, D. C., this 27th day of January, A. D. 1905. I ask that this be filed, and I submit a copy for the managers.

The PRESIDING OFFICER. It will be placed on file.

Mr. THURSTON. On behalf of the respondent we make the following motion:

In the Senate of the United States, sitting as a court of impeachment.

The United States of America v. Charles Swayne. Upon articles of impeachment presented by the House of Representatives of the United States of America.

The respondent, by his counsel, now comes and moves the court to grant him the period of seven days in which to prepare and present his answer to the articles of impeachment presented against him herein.

ANTHONY HIGGINS.
JOHN M. THURSTON.

Mr. FAIRBANKS. Mr. President, I move the adoption of the order which I sent to the desk.

The PRESIDING OFFICER. The Senator from Indiana moves the adoption of an order, which will be read.

The order was read and agreed to, as follows:

Ordered, That the respondent present his answer to the articles of impeachment at 12 o'clock and 30 minutes post meridian on the 3d day of February next.

Mr. Manager PALMER. I move the adoption of the order which I send to the Secretary's desk to be read.

The PRESIDING OFFICER. The proposed order will be read.

The Secretary read as follows:

Ordered, That lists of witnesses be furnished the Sergeant-at-Arms by the managers and the respondent, who shall be subpoenaed by him to appear on the 10th day of February, at 1 o'clock post meridian.

Ordered, That the cause shall be opened and the trial proceed on the 13th day of February, at 1 o'clock post meridian, unless otherwise ordered.

The PRESIDING OFFICER. Senators, are you ready for the question on the adoption of the order presented by the managers on the part of the House?

Mr. THURSTON. Mr. President—

Mr. Manager PALMER. I move the adoption of the order.

Mr. FAIRBANKS. The reading of the order was not distinctly heard, and I ask that it may be again read for the information of the Senate.

The PRESIDING OFFICER. The proposed order will again be read.

The Secretary again read the order.

Mr. THURSTON. Mr. President, on behalf of the respondent we desire to say that we have had in mind the important public business that must necessarily be transacted by the Senate between now and the expiration of the session on the 4th of March, and we are disposed in every way consistent with the interests of our client to assist the Senate in expediting this trial. And for our part, while we are not here in the attitude of objecting to any order that the Senate may seek to make, we see no reason why the trial might not proceed just as well on the 10th day of February as on the 13th.

Mr. FAIRBANKS. Mr. President, I ask for a division. Two orders are proposed. I ask that the first may be first considered.

The PRESIDING OFFICER. The request of the Senator from Indiana is entirely within the rules of the Senate. The Secretary will read the first division of the proposed order.

The Secretary read as follows:

Ordered, That lists of witnesses be furnished the Sergeant-at-Arms by the managers and the respondent, who shall be subpoenaed by him to appear on the 10th day of February, at 1 o'clock p. m.

Mr. BACON. Mr. President, in order that Senators may vote intelligently upon the order, I suggest that it might be profitable for the managers to state to us the reason why it is not practicable to proceed on the 10th, if such reason there be.

The PRESIDING OFFICER. The first division of the order is now under consideration, providing that the witnesses be directed to appear on the 10th.

Mr. BACON. I did not catch the reading. I withdraw the suggestion until after the pending question is disposed of.

The PRESIDING OFFICER. The question is on agreeing to the first part of the order, which has been read.

Mr. BAILEY. Mr. President, it does not seem to me that there can be any good reason why the managers on the part of the House can not be ready to proceed with this trial on the 3d day of February instead of the 13th. Without intending the slightest criticism of the managers, or the House itself, I beg to remind this court that for several months the House has pursued through its committees, this investigation, and I am perfectly sure that the managers on the part of the House know at this moment all of the important facts involved in this controversy.

This investigation was proposed and directed by the House quite a year ago, or almost. The accused has been through all the allegations and all the testimony against him, and within one week from to-day, it seems to me, the Senate, sitting as a court, could reasonably expect both sides to be ready to proceed.

If this trial is delayed until the 13th of February we will witness the spectacle, to say the least not gratifying, of the Senate being forced either to hurry with this solemn and important duty or neglect some of its legislative functions. Unless the managers on the part of the House are willing to say that they could not prepare to proceed with the trial of this case upon the day when Judge Swayne makes his answer, I should prefer—I should almost insist—that we enter upon the trial then instead of on the 10th, as suggested by some, or on the 13th, as proposed by the managers on the part of the House.

I sincerely hope that the managers on the part of the House will feel warranted in saying that they will be ready to proceed upon the very day when Judge Swayne shall make his answer.

Mr. SPOONER. Mr. President, if the answer of the respondent is to be exhibited to the Senate on the 3d day of February, it would be undue haste and perhaps injustice to the managers to require them to proceed to trial on that day. The practice is, and in this case it may very easily be a necessity, that the managers of the House will desire to file a replication to the answer. They will not have had opportunity to peruse it until the 3d. They should have opportunity to consider it and to prepare such pleadings in reply to it as they may be advised. So I think they ought not to be required to proceed to trial on the same day that the answer of the respondent is presented to the Senate.

Mr. BAILEY. I suggest to the Senator from Wisconsin that we would proceed with the trial within the meaning of that term, and if the managers on the part of the House desire to have one day or two days to make such reply as they might deem necessary, the court could then allow it. I object merely to the delay of ten days or the delay of one week after the answer is made being ordered now. Undoubtedly if the court entered upon the trial on the 3d day of February and the managers on the part of the House should ask for time to reply to the answer of Judge Swayne, no Senator would doubt the propriety and justice of allowing it. But they might only want one day, or they might only want two days; and it seems to me that we would save time by ordering the trial to begin then, because by such order it does not necessarily mean that the testimony shall be taken either that or the following day.

Mr. Manager PALMER. Mr. President, on behalf of the managers I wish to state that under the order which has already been made the respondent has until the 3d day of February to answer. The mana-

gers will be obliged to submit any replication or exception or demurrer that they may see fit to prepare to the House for its adoption. We shall ask at least two days or perhaps three days for that purpose. That will run the time over until the 6th day of February. Then probably an argument will occur on the replication or on the exceptions or on the demurrer or on whatever pleading the managers may see fit to file.

Of course it is not supposed that the proceedings in this case will be suspended until the 13th. It is supposed that between the 3d and the 13th the issues will be framed and the pleadings settled. No lawyer can undertake to prepare a case until the pleadings are settled, until he knows what issues he has to meet. We are not aware and we can not foretell what answer the respondent will make in this case. If the pleadings are settled by the 6th of February and the witnesses are subpoenaed to appear on the 10th, and it is ordered that the case shall be opened and the witnesses examined on the 13th, that will give the managers from the 10th to the 13th to examine their witnesses and to arrange in an orderly way so that the case may be adequately and properly presented to the Senate.

That is the thought which the managers had in presenting this order. I wish to state that the time is as short as it possibly can be. The managers can not get ready any sooner than that, and there will be nothing gained by forcing a trial before that date.

Mr. BLACKBURN. Mr. President, in order that the Senate may be informed just here on what seems to me to be an essential matter, I want to know whether we are to understand from the managers of the House that every pleading that the managers are to prepare, whether in the nature of a reply to an answer or a demurrer or exception—all of these preliminary pleadings—must, in the judgement of the managers, be by them submitted to the House and approved before they have authority to file, and proceed here?

Mr. Manager PALMER. Mr. President—

Mr. BLACKBURN. Will the manager allow me for just a moment? I will complete the question, because I rise simply to get the information that seems to me necessary.

My understanding of it is that the members of the House who constitute the committee of managers are assumed to be lawyers. Else, I take it, they would not have been selected by the House. I may be entirely in error, but my understanding is that when the House selected them and clothed them with the duty of representing the House in the prosecution of these charges they, and not the House, were charged with the preparation of the pleadings and the bringing of this case to trial, and that they have already the authority of the House. I do not understand—though, as I have said, I may be entirely in error—that they must go back and get additional authority in the nature of approval of every step that they take in the discharge of the duty which the House has put upon them as its managers and representative in the prosecution of this impeachment.

Mr. Manager PALMER. In answer to the Senator from Kentucky, I will say that we are proceeding in strict accordance with all the precedents, from the first impeachment trial ever had in the Senate down to the last trial that was had, namely, that of William W. Belknap, Secretary of War. The managers have always consulted the House as to the form of pleadings, especially the replication. The House prepares

the articles, the House votes on the articles, and necessarily there must be submitted to the House any replication or exceptions or demurrer that the managers may prepare. We only follow the precedents; and while it may be a very violent presumption that the managers are lawyers, we at least are lawyers enough to follow precedent.

The PRESIDING OFFICER. The Chair wishes to observe at this point that he doubts the propriety of debate between Senators and the managers of the impeachment on the part of the House. He does not speak positively upon that question, not having had an opportunity to examine the precedents.

Mr. FAIRBANKS. We understand that the order which the managers of the House have asked for can not properly be put by them, and I suppose it is the proper practice to regard the order offered as a request. I offer, upon the request of the managers of the House, for present consideration the order which I send to the desk.

The PRESIDING OFFICER. The order will be read.

The Secretary read as follows:

Ordered, That lists of witnesses be furnished the Sergeant-at-Arms by the managers and the respondent, who shall be subpoenaed by him to appear on the 10th day of February, at 1 o'clock p. m.

The PRESIDING OFFICER. Senators, are you ready for the question?

Mr. TELLER. Let the order be read again.

The PRESIDING OFFICER. The Senator from Colorado calls for the further reading of the proposed order.

The Secretary again read the order.

Mr. BAILEY. Mr. President, I move to strike out the word "tenth" and to insert "third." I may be permitted to say in support of the motion that the very practice suggested by the managers of the House, of reporting back to the House such replication, answer, or demurrer as they may see fit to recommend, emphasizes the necessity of the Senate proceeding with this trial at the earliest possible day.

The PRESIDING OFFICER. The Senator from Texas moves to amend the proposed order as will be stated.

The SECRETARY. In the last line it is proposed to strike out the word "tenth" and insert "third;" so as to read "the 3d day of February."

Mr. BACON. I should like to inquire of the managers, through the Chair, whether there is any difficulty in the witnesses being summoned to appear and their obeying the summons by the 3d?

The PRESIDING OFFICER. The managers will respond.

Mr. Manager PALMER. Mr. President, I should say it would be practically a physical impossibility to get the witnesses here by the 3d. They are in Florida and in Texas and in Louisiana, and by the ordinary courses of travel at this season it would be practically impossible for the Sergeant-at-Arms to go there, ascertain where the witnesses are, summon them, and bring them here by the 3d.

Secondly, it would be of no use at all to get them here on the 3d; we could not do anything with them, because the pleadings will not have been settled on the 3d. The 3d of February is the day when the respondent is to put in his answer.

The House will ask, and I suppose under the practice will receive, some time to file a replication. There is no use to have the witnesses here until after the pleadings are settled, certainly, and it seems to me

to be a reasonable request that the managers should have a few minutes after the witnesses get here to prepare for the trial.

Mr. BAILEY. Mr. President, in view of the statement by the managers of the House that it would be a physical impossibility to summon these witnesses and have them here by the 3d, I withdraw the amendment which I proposed.

The PRESIDING OFFICER. The amendment is withdrawn. The question is on agreeing to the order.

The order was agreed to.

Mr. FAIRBANKS. I move, Mr. President, that the Senate sitting for the trial of the impeachment adjourn until Friday, the 3d day of February next, at half past 12 o'clock postmeridian.

The motion was agreed to; and (at 1 o'clock and 40 minutes p. m.) the Senate, sitting for the trial of the impeachment, adjourned until Friday, February 3, 1905, at 12.30 o'clock p. m.

The managers on the part of the House and the counsel for the respondent withdrew from the Chamber.

The PRESIDENT pro tempore resumed the chair.

Mr. BAILEY. Mr. President, a moment ago, when the Senate was sitting as a court, it was doubted if the managers on the part of the House are permitted under the rules to make a motion. My own opinion is that nobody but a Senator can make a motion to be voted on by the Senate, but it would be a most anomalous situation if an attorney in any kind of a court could not make motions before that court to be acted on by that court. And for my own guidance—I am sure that other Senators are in much the same frame of mind—I should like to have that question settled. If it would be proper, I should like to have the Judiciary Committee report, or if the Senate prefers, a special committee, what have been the practice and the precedents in that respect.

It would be awkward, to say the least of it, if the managers on the part of the House in a trial of this kind should have to solicit some Senator to make a motion which they thought necessary to the presentation of their case.

Mr. BACON. I will state that which will recall to the recollection of the Senator from Texas a fact possibly he has forgotten. The Senate already has a special committee appointed for the purpose of considering all questions of that kind.

Mr. BAILEY. That had escaped my mind; and as there is a special committee of that kind of course that special committee will be prepared to report on it. I should dislike to see the Senate again meet as a court without some understanding as to the power of the managers on the part of the House or counsel on the part of Judge Swayne. Without having looked at the precedents at all, my impression would be that they would be entitled to make the same motions to this court that any attorney would be in any other court.

The PRESIDENT pro tempore. There is a select committee, of which the Senator from Connecticut [Mr. Platt] is chairman, and undoubtedly, the attention of that committee having been called to this question, the Senate will be advised by it.

IN THE SENATE, *February 3, 1905.*

The PRESIDENT pro tempore (at 12 o'clock and 30 minutes p. m.). The hour has arrived to which the Senate sitting as a court of impeachment adjourned, and the Senator from Connecticut will please take the chair.

Mr. Platt, of Connecticut, assumed the chair.

The PRESIDING OFFICER (Mr. PLATT, of Connecticut). The Senate is now sitting for the trial of the impeachment of Charles Swayne, a judge of the United States in and for the northern district of Florida. The Sergeant-at-Arms will make proclamation.

The Sergeant-at-Arms made proclamation as follows:

Hear ye! Hear ye! Hear ye! All persons are commanded to keep silence, on pain of imprisonment, while the Senate of the United States is sitting for the trial of the articles of impeachment exhibited by the House of Representatives of the United States against Charles Swayne, judge of the district court of the United States in and for the northern district of Florida.

The PRESIDING OFFICER. The following Senators who are now present and who have not been heretofore sworn will please present themselves in front of the desk to receive the oath: Mr. Quarles, Mr. Culberson, and Mr. Foster, of Washington.

Mr. Quarles, Mr. Culberson, and Mr. Foster, of Washington, advanced to the area in front of the Secretary's desk, and the Presiding Officer administered to them the following oath:

You do, each of you, solemnly swear that in all things appertaining to the trial of the impeachment of Charles Swayne, judge in and for the northern district of Florida, now pending, you will do impartial justice, according to the Constitution and laws. So help you God.

The PRESIDING OFFICER. The Sergeant-at-Arms will notify the managers, if they are in waiting, that the Senate is ready to proceed.

At 12 o'clock and 32 minutes p. m. the managers on the part of the House of Representatives were announced, and they were conducted by the Assistant Sergeant-at-Arms to the seats assigned them in the area in front of the Secretary's desk.

The PRESIDING OFFICER. The Sergeant-at-Arms will also notify the counsel for the respondent.

Mr. Anthony Higgins and Mr. John M. Thurston, counsel for the respondent, entered the chamber and were assigned to the seats provided for them in the area in front of the Secretary's desk.

The PRESIDING OFFICER. The Journal of the proceedings of the last session of the Senate sitting for the trial of the impeachment of Charles Swayne will now be read.

The Journal of the proceedings of the Senate sitting as a court on Friday, January 27, 1905, was read and approved.

Mr. BACON. Mr. President, I am instructed by the special committee of the Senate in the present impeachment case to submit an order relative to the procedure in this case, which it is requested may have present consideration and be adopted.

The PRESIDING OFFICER. The proposed order will be read by the Secretary.

The Secretary read as follows:

Ordered, That in all matters relating to the procedure of the Senate sitting in the trial of the impeachment of Charles Swayne, judge of the district court of the United States in and for the northern district of Florida, whether as to form or otherwise,

the managers on the part of the House, or the counsel representing the respondent, may submit a request or application orally to the Presiding Officer, or, if required by him or requested by any Senator, shall submit the same in writing.

In all matters relating immediately to the trial, such as the admission, rejection, or striking out of evidence, or other questions usually arising in the trial of causes in courts of justice, if the managers or counsel for the respondent desire to make any application, request, or objection, the same shall be addressed directly to the Presiding Officer and not otherwise.

It shall not be in order for any Senator to engage in colloquy or to address questions either to the managers on the part of the House or the counsel for the respondent, nor shall it be in order for Senators to address each other, but they shall address their remarks directly to the Presiding Officer.

THE PRESIDING OFFICER. The Senator from Georgia asks unanimous consent for the immediate consideration of the order which has just been read. Is there objection? [A pause.] If not, shall it be adopted? [Putting the question.] The order is agreed to.

MR. SPOONER. Mr. President, as the order is to operate as a suspension, during the time of this trial, of general rules of the Senate upon the subject of impeachment, I think the record should show what the fact is—that the order was unanimously adopted.

THE PRESIDING OFFICER. The Presiding Officer will state that the resolution was unanimously adopted. Are counsel for the respondent ready to proceed?

MR. THURSTON. Mr. President, counsel for the respondent now come, and for answer of said Charles Swayne under impeachment herein say:

In the Senate of the United States, sitting as a court of impeachment.

<p>THE UNITED STATES OF AMERICA v. CHARLES SWAYNE.</p>	}	<p>Upon articles of impeachment presented by the House of Representatives of the United States of America.</p>
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And the said Charles Swayne, named in said articles of impeachment, comes before the honorable Senate of the United States, sitting as a court of impeachment, and says that this honorable court ought not to have or take further cognizance of the first of said articles of impeachment so exhibited and presented against him, because, he says, the facts set forth in said first article do not, if true, constitute an impeachable high crime and misdemeanor as defined in the Constitution of the United States.

And now, not waiving the foregoing plea to the jurisdiction of the honorable Senate of the United States, sitting as a court of impeachment, as to said first article, the said respondent saving to himself all advantages of exception to said first article, for answer thereto saith:

He admits that on the 20th day of April, 1897, at Waco, in the State of Texas, acting as United States judge in and for the northern district of Florida, he made and presented to R. N. Love, the United States marshal in and for the northern district of Texas, the certificate in writing as set forth in the said first article, and did then and there receive from the said R. N. Love, United States marshal as aforesaid, the sum of \$230 in full payment of the account certified to as aforesaid, and the respondent says that he then and there believed, and still believes and insists, that, under the true meaning and intent of the statutes of the United States allowing the expenses of a district judge of the United States for travel and expenses while holding court outside of his own district, the said claim was just and in strict accordance with the provisions of the law of Congress in that respect enacted; and he denies that he then and there knew or believed said claim to be false, as set forth in said article; and he denies that he signed and presented the said certificate for the purpose of obtaining payment of any false claim; and he denies that he then and there made and used a false certificate knowing or believing said certificate to be false, all as alleged in said first article; and he denies that he then and there knew or believed that there was then and there justly due him a far less sum than the sum specified in the said certificate, all as alleged and charged in the said first article.

And further answering, respondent says that at the time he made and presented the said certificate he had been, by order of the circuit judge of the United States of the fifth judicial circuit, ordered and directed, as provided by law, to leave the northern district of Florida and proceed to the city of Waco, in the northern district of Texas, and there hold court at said place, the same being outside of his own

district; and he says that the statement made in said certificate in that respect was and is true, and that he was necessarily absent from the said northern district of Florida in attendance upon and holding court in the said northern district of Texas twenty-three days, commencing on the 20th day of April, 1897, as set forth and specified in the said certificate, and the said certificate is in that and all other respects true.

Respondent, further answering, says that at and before the time of proceeding to the said northern district of Texas, under direction and order of the circuit judge of the said circuit, as he was lawfully bound to do, and at the date of the making and presentation of the said certificate to the said United States marshal, he was cognizant of and knew the provisions of section 596 of the Revised Statutes of the United States, and of the repealing act relating thereto, to wit, paragraph 2 of chapter 133 of the act of Congress of March 3, A. D. 1881; that he was also cognizant of and knew the provisions of the act of Congress of June 11, 1896, relating to the compensation of judges for expenses for attendance and travel while outside of their respective districts engaged in holding terms of the United States courts; and in the making of said certificate and in the setting forth of the amount of his necessary expenses for travel and attendance outside of his district, at the said United States court held at Waco, Tex., it became his duty to construe the said last specified act of Congress; and he says that to the best of his judgment, and in an honest effort to reach a true conclusion as to the construction and intent and meaning thereof, he reached the conclusion and judgment that under the true construction, intent, and meaning of the said act it was intended by the Congress of the United States that an allowance of \$10 per day should be made to the said judges for the expenses of travel and attendance while holding court outside of their districts, as a fixed and definite allowance, and as a reasonable compensation to them, and each of them, for their necessary expenses for such travel and attendance; and respondent says that, so honestly believing it to be the true construction and intent and meaning of the said act, that he was, under the law, entitled to certify and receive from the Treasury of the United States his compensation for reasonable expenses for attendance and travel at the rate of \$10 per day as a liquidated sum, and with the honest belief that he, this respondent, was entitled to collect and receive from the United States the sum of \$10 per day as aforesaid, and to certify the said sum of \$10 per day as his reasonable expenses for travel and attendance, this respondent made and presented the said certificate as set forth in said article, and received the sum of money therein certified; and he here and now insists that the construction so honestly placed by him upon the said provision of law aforesaid was the true construction, intent, and meaning of the same, as the same was intended to be expressed by the Congress of the United States in the enactment thereof; and he insists that he was entitled to the said compensation of \$10 per day for necessary expenses of travel and attendance while holding court outside of his district, without being required to determine or ascertain at the time of making said certificate as to whether or not said sum of \$10 had actually been paid out by him on each and every of said days, or as to whether or not he had actually incurred on each and every of said days expenses to the full amount of \$10; and respondent denies expressly that he well knew that he was forbidden by law to receive compensation at said rate, but he says he honestly believed at the time he executed said certificate and received said moneys that he was lawfully entitled to so certify and receive the same.

Respondent says that he is fortified and confirmed in his honest belief that the construction so placed by him upon the said provision allowing him reasonable expenses for travel and attendance while holding court outside of his own district was and is right, and that he was entitled to certify to and receive from the United States the amount of \$10 per day, as aforesaid, by the fact that, as he is informed and verily believes, and as the records of the Treasury Department will show, that many of the circuit judges of the United States had long prior to said time placed a similar construction upon section 8 of an act of Congress approved March 3, 1891, entitled "An act to establish circuit courts of appeals and to define and regulate in certain cases the jurisdiction of the courts of the United States, and for other purposes," which section 8 provided, in terms similar to the act of Congress under and by virtue of which he so certified to his reasonable expenses for travel and attendance at the rate of \$10 per day, for an allowance to said circuit judges of their "reasonable expenses for travel and attendance, not to exceed \$10 per day," while attending circuit courts of appeals held at any place other than where the judges so certifying might reside, and by the further fact, as he is informed and verily believes, and as the records of the Treasury Department will show, that since the enactment of the law hereinbefore referred to, allowing the district judges their reasonable expenses for travel and attendance not exceeding \$10 per day, and at times both prior and subsequent to the date when he made his said certificate and received the said sum of

money therein specified, many of said district judges had placed a similar construction upon the said provision of law as the one placed thereon by this respondent and hereinbefore stated.

And respondent says that he attaches to this, his answer to the said article 1, copies of certificates of the Honorable the Secretary of the Treasury, marked, respectively, Exhibits A, et seq., and asks that the same be accepted and taken as a part of this his answer to the said article 1.

Respondent further says that he is informed and verily believes, and he alleges that the records of the Treasury Department will show, that at all times since the enactment by Congress of the several provisions hereinbefore referred to, allowing to the several judges of the courts of the United States their reasonable expenses for travel and attendance at the rate of \$10 per day, many of the said judges of the United States courts have, from year to year and up to the present time, continued in their said construction of the true intent and meaning of the said several provisions, and have certified to and received from the Government of the United States the said sum of \$10 per day for each and every day wherein they were attending courts at other places than within their own circuits and districts as their lawful allowance for reasonable expenses for travel and attendance.

Whereby respondent alleges that the said construction so placed by him upon the provision of the said statute had become, by the contemporaneous judgment and decision of many of the judges of the courts of the United States, the true and accepted construction, intent, and meaning of said provision.

Respondent further says that the various acts of appropriation of the Congress of the United States made from time to time, after full debate and with full knowledge of the construction which had been placed upon the said act, as will more fully appear from the proceedings and debates in Congress in connection with the said appropriations, further show that the construction and true meaning and intent of the said acts of Congress hereinbefore referred to were and are, as judged and determined by this respondent and by many of the judges of the courts of the United States, as hereinbefore set forth.

Respondent further says that up to the time charges were presented against him in the House of Representatives for alleged violation of the said provisions no suggestion or intimation had ever reached him, emanating from any of the judges of the courts of the United States, that the construction so placed by him upon the said provision was not the true construction, or that it did not represent the true intent and meaning of said act; notwithstanding the fact, as respondent is informed, and verily believes, that the auditing and other officials of the United States Treasury and many of the judges of the courts of the United States well knew and understood that the said construction, so placed upon the said provision by this respondent, was the same construction generally placed thereon by the said judges of the United States and by the officials of the United States having in charge the inspection and allowance of said accounts; and respondent alleges the fact to be that in all his acts and doings in the premises, and in the making of said certificate and receiving of said money as charged in said article 1, he acted honestly, conscientiously, and as he believed, and still believes, in the conscientious performance of his duties, and in accordance with the true construction, intent, and meaning of said provision.

Respondent further says that even if it shall be held and determined that the said construction of the said provision as to its true intent and meaning was erroneous, and not in law a correct construction of the true intent and meaning of the same, nevertheless it is manifestly apparent that the wording of said provision is such that the same might and could, in the exercise of an honest, conscientious, and impartial judicial consideration of the same, be fairly held to mean what this respondent determined and believed it meant when he was called upon, as aforesaid, to construe the same, and to decide as to what he should certify to the United States as his reasonable expenses for travel and attendance while holding court outside of his own district; and respondent says that his action, determination, and adjudication in that respect were free from any purpose or desire to defraud, or to certify to or receive from the United States any other or greater compensation than he was by law justly entitled to, and that all his actions in the premises were without any unlawful or fraudulent purpose or intent to deceive or defraud the Government of the United States; and he should not be adjudged guilty of a high crime or misdemeanor against the United States upon the allegations set forth in the said first article.

SWAYNE IMPEACHMENT PROCEEDINGS IN THE SENATE. 29

EXHIBIT A.

Statement showing amounts paid to United States circuit judges as expenses claimed while attending circuit courts of appeals away from their residences, and amounts paid to United States district judges as expenses claimed while holding court out of their own districts, or while attending circuit courts of appeals away from their residences, said courts being in the

FIFTH CIRCUIT.—July 1, 1902, to June 30, 1903.

Name of marshal.	Account No.	Place of holding court.	Number of days.	Name of judge.	Amount paid.
W. H. Johnson.....	89901	Atlanta, Ga.....	20	A. P. McCormick.....	\$200.00
W. H. Johnson.....	89901	Atlanta, Ga.....	18	D. D. Shelby.....	180.00
Chas. Fontelleu.....	90562	New Orleans, La.....	47	D. D. Shelby.....	470.00
Chas. Fontelleu.....	90562	New Orleans, La.....	47	Aleck Boardman.....	470.00
Chas. Fontelleu.....	90562	New Orleans, La.....	37	D. A. Pardee.....	370.00
Chas. Fontelleu.....	90562	New Orleans, La.....	17	E. R. Meek.....	170.00
Chas. Fontelleu.....	95551	New Orleans, La.....	88	D. A. Pardee.....	880.00
Chas. Fontelleu.....	95551	New Orleans, La.....	83	A. P. McCormick.....	830.00
Chas. Fontelleu.....	95551	New Orleans, La.....	90	D. D. Shelby.....	900.00
Chas. Fontelleu.....	95551	New Orleans, La.....	5	E. R. Meek.....	50.00
Chas. Fontelleu.....	95551	New Orleans, La.....	14	W. T. Newman.....	140.00
Chas. Fontelleu.....	95551	New Orleans, La.....	64	Aleck Boardman.....	640.00
Chas. Fontelleu.....	96827	New Orleans, La.....	11	D. A. Pardee.....	110.00
Chas. Fontelleu.....	96827	New Orleans, La.....	12	D. D. Shelby.....	120.00
Chas. Fontelleu.....	96827	New Orleans, La.....	12	A. P. McCormick.....	120.00
Chas. Fontelleu.....	96827	New Orleans, La.....	41	Aleck Boardman.....	410.00
A. J. Houston.....	91439	Paris, Tex.....	2	E. R. Meek.....	20.00
A. J. Houston.....	93964	Paris, Tex.....	8	E. R. Meek.....	80.00
A. J. Houston.....	93964	Tyler, Tex.....	41	Charles Swayne.....	410.00
A. J. Houston.....	93964	Paris, Tex.....	8	E. R. Meek.....	20.00
D. N. Cooper.....	92609	Birmingham, Ala.....	81	H. T. Toulmin.....	810.00
G. H. Green.....	93536	Fort Worth, Tex.....	7	D. E. Bryant.....	35.00

TREASURY DEPARTMENT,

Washington, D. C., January 28, 1905.

I certify that the foregoing is a correct statement from accounts on file in this Department.

L. M. SHAW,
Secretary of the Treasury.
C. G. T.

EXHIBIT B.

Statement showing amounts paid to United States circuit judges as expenses claimed while attending circuit courts of appeals away from their residences, and amounts paid to United States district judges as expenses claimed while holding court out of their own districts or while attending circuit courts of appeals away from their residences, said courts being in the

SEVENTH CIRCUIT.—July 1, 1902, to June 30, 1903.

Name of marshal paying voucher.	Account No.	Place of holding court.	Number of days.	Name of judge.	Amount paid.
Ames.....	88452	Chicago, Ill.....	2	Jenkins.....	\$20.00
Ames.....	88452	Chicago, Ill.....	1	Baker, F. E.....	10.00
Ames.....	88452	Chicago, Ill.....	4	Seaman.....	40.00
Ames.....	91604	Chicago, Ill.....	35	Jenkins.....	350.00
Ames.....	91604	Chicago, Ill.....	4	Bunn.....	40.00
Ames.....	91604	Chicago, Ill.....	35	Baker, F. E.....	350.00
Ames.....	91604	Chicago, Ill.....	35	Seaman.....	350.00
Ames.....	91604	Chicago, Ill.....	18	Humphrey.....	180.00
Ames.....	91604	Peoria, Ill.....	11	Humphrey.....	110.00
Ames.....	93882	Chicago, Ill.....	30	Jenkins.....	300.00
Ames.....	93882	Chicago, Ill.....	7	Bunn.....	70.00
Ames.....	93882	Chicago, Ill.....	28	Baker, F. E.....	280.00
Ames.....	93882	Chicago, Ill.....	10	Seaman.....	100.00
Ames.....	93882	Chicago, Ill.....	20	Humphrey.....	200.00
Ames.....	93882	Peoria, Ill.....	2	Humphrey.....	20.00
Ames.....	95604	Chicago, Ill.....	30	Jenkins.....	300.00
Ames.....	95604	Chicago, Ill.....	30	Baker, F. E.....	300.00
Ames.....	95604	Chicago, Ill.....	17	Seaman.....	170.00

30 SWAYNE IMPEACHMENT PROCEEDINGS IN THE SENATE.

Statement showing amounts paid to United States circuit judges and expenses claimed while attending circuit courts of appeals away from their residences, etc.—Continued.

SEVENTH CIRCUIT.—July 1, 1902, to June 30, 1903—Continued.

Name of marshal paying voucher.	Account No.	Place of holding court.	Number of days.	Name of judge.	Amount paid.
Ames.....	95604	Chicago, Ill.....	8	Humphrey.....	\$80.00
Ames.....	95604	Peoria, Ill.....	11	Humphrey.....	110.00
Ames.....	95604	Chicago, Ill.....	3	Bunn.....	30.00
Ames.....	95604	Chicago, Ill.....	4	Anderson.....	40.00
Lewiston.....	89556	Madison, Wis.....	2	Seaman.....	20.00
Lewiston.....	95638	Madison, Wis.....	4	Seaman.....	40.00
Hitch.....	93925	Springfield, Ill.....	4	Kohlsaat.....	40.00
Pettit.....	95684	Indianapolis, Ind.....	11	Seaman.....	110.00

TREASURY DEPARTMENT,
Washington, D. C., January 28, 1905.

I certify that the foregoing is a correct statement from accounts on file in this Department.

L. M. SHAW,
Secretary of the Treasury,
C. G. T.

EXHIBIT C.

Statement showing amounts paid to United States circuit judges as expenses claimed while attending circuit courts of appeals away from their residences, and amounts paid to United States district judges as expenses claimed while holding court out of their own districts or while attending circuit courts of appeals away from their residences, said courts being in the

NINTH CIRCUIT.—July 1, 1902, to June 30, 1903.

Name of marshal.	Account No.	Place of holding court.	Number of days.	Name of judge.	Amount paid.
Matthews.....	88855	Portland, Oreg.....	7	Morrow.....	\$70.00
Matthews.....	88855	Portland, Oreg.....	7	Ross.....	70.00
Hopkins.....	88353	Tacoma, Wash.....	17	DeHaven.....	124.00
Hopkins.....	88353	Seattle, Wash.....	8	Gilbert.....	80.00
Hopkins.....	88353	Seattle, Wash.....	13	Ross.....	130.00
Hopkins.....	88353	Seattle, Wash.....	11	Morrow.....	110.00
Shine.....	91447	San Francisco, Cal.....	26	Bellinger.....	260.00
Shine.....	91447	San Francisco, Cal.....	7	Hawley.....	70.00
Shine.....	91447	San Francisco, Cal.....	47	Ross.....	470.00
Shine.....	91447	San Francisco, Cal.....	49	Gilbert.....	490.00
Hopkins.....	90385	Tacoma, Wash.....	11	DeHaven.....	79.75
Shine.....	88266	San Francisco, Cal.....	3	Hawley.....	30.00
Shine.....	88266	San Francisco, Cal.....	7	Gilbert.....	70.00
Shine.....	88266	San Francisco, Cal.....	10	Ross.....	100.00
Shine.....	88266	San Francisco, Cal.....	62	Beatty.....	434.00
Shine.....	93794	San Francisco, Cal.....	44	Ross.....	440.00
Shine.....	93794	San Francisco, Cal.....	49	Gilbert.....	490.00
Shine.....	93794	San Francisco, Cal.....	19	Bellinger.....	190.00
Shine.....	93794	San Francisco, Cal.....	16	Hawley.....	150.00
Shine.....	95307	San Francisco, Cal.....	31	Ross.....	310.00
Shine.....	95307	San Francisco, Cal.....	23	Hawley.....	220.00
Shine.....	95307	San Francisco, Cal.....	40	Gilbert.....	400.00

TREASURY DEPARTMENT,
Washington, D. C., January 28, 1905.

I certify that the foregoing is a correct statement from accounts on file in this Department.

L. M. SHAW,
Secretary of the Treasury,
C. G. T.

Respondent asks leave to attach hereto further similar exhibits, when received from the Secretary of the Treasury, showing the amounts certified to and received by the several judges of the United States in the other circuits, for the year 1903, as their reasonable expenses for travel and attendance while holding court away from their places of residence or outside of their respective districts.

ANSWER TO ARTICLE 2.

And the said Charles Swayne, named in the articles of impeachment, says that this honorable court ought not to have or take further cognizance of the second of said articles of impeachment so exhibited and presented against him, because he says the facts set forth in the said second article do not, if true, constitute an impeachable high crime and misdemeanor as defined in the Constitution of the United States.

And now, not waiving the foregoing plea to the jurisdiction of the honorable Senate of the United States, sitting as a court of impeachment, as to said second article, he said respondent saving to himself all advantages of exception to said second article, for answer thereto saith:

He admits that prior to the year 1900 he had been duly appointed, confirmed, and commissioned as judge of the United States in and for the northern district of Florida, and had entered upon the duties of his office, and was in the exercise of his office as judge as aforesaid at all times in the said article specified and as therein alleged.

Further answering, respondent says he admits that he was entitled by law to be paid his reasonable expenses for travel and attendance when lawfully directed to hold court outside of the northern district of Florida, not exceeding \$10 per diem, to be paid upon his certificate by the United States marshal for the district in which he court was held, all as alleged in said article second; and respondent says that he was, at the time specified in said article second, absent from the said northern district of Florida, and was engaged in holding court at Tyler, Tex., under and by virtue of an order in that respect made by the circuit judge of the fifth judicial circuit of the United States; and he alleges that he was necessarily absent from his district attending and holding court at the said Tyler, Tex., and in going to and returning from said Tyler, Tex., as many days as he certified to in any certificate made by him and presented to the United States marshal for the eastern district of Texas, certifying to the amount of his reasonable expenses for travel and attendance while absent from his district to attend and hold the said court at Tyler, Tex.

Respondent says that he has not in his possession, and has not seen, since the time it was presented to the said United States marshal for the eastern district of Texas, the certificate which he made at that time setting forth his reasonable expenses for travel and attendance as aforesaid, and is not now able to remember or state the particular number of days specified in the said certificate, representing the time he was absent from his district in attending and holding court at the said Tyler, Tex.; but he says that whatever number of days may appear in said certificate as having been so certified to by him were the true number of days he was absent from his said district in attending and holding court at Tyler, Tex., in pursuance of the order of the circuit judge of the fifth judicial circuit, as above stated; and respondent says that he did receive from the United States marshal for the eastern district of Texas, at or about the time stated in said article second, a sum of money as set forth in the said certificate, the exact amount of which this respondent is not able now to remember or state, but which represented an amount equal to \$10 per diem for each of the days stated in said certificate during which this respondent had been absent from his district attending and holding court at the said Tyler, Tex.

Respondent denies the allegation, in said article second contained, wherein it is alleged that at the said time he so certified he well knew that he was forbidden by law to receive compensation for his necessary travel and attendance while holding court outside of his own district, at the rate of \$10 per diem as certified in the said certificate, and he denies that he falsely certified as set forth and alleged in said article second.

Respondent, for further answer, says that in all his acts and doings, and in the making of the certificate and receiving the sum of money therein certified to, as hereinbefore stated, he believed at the time, and still believes, that the true construction and the true intent and meaning of the law of the United States providing for the payment for his reasonable expenses for travel and attendance as aforesaid, was, and is, as by him more fully set forth and stated in his answer herein to the first of the articles of impeachment presented against him herein; and with respect thereto he hereby reiterates and reaffirms all of the allegations and statements in said answer to said first article contained, and adopts the same as his further and complete answer

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to the said article second, and asks that the said allegations and statements in said answer to the said first article shall be taken and accepted as his further and complete answer to the allegations of said article second, as fully and with the same force and effect as if they were herein specifically reiterated and set forth, and prays equal benefit therefrom as if the same were here again fully repeated.

ANSWER TO ARTICLE 3.

And the said Charles Swayne, named in the articles of impeachment, says that this honorable court ought not to have or take further cognizance of the third of said articles of impeachment so exhibited and presented against him, because, he says, the facts set forth in the said third article do not, if true, constitute an impeachable high crime and misdemeanor, as defined in the Constitution of the United States.

And now, not waiving the foregoing plea to the jurisdiction of the honorable Senate of the United States, sitting as a court of impeachment, as to said third article, the said respondent saving to himself all advantages of exception to said third article, for answer thereto saith:

He admits that prior to the year 1900 he had been duly appointed, confirmed, and commissioned as judge of the United States in and for the northern district of Florida and had entered upon the duties of his office, and that he was in the exercise of his office as judge as aforesaid at all times in the said article specified and as therein alleged.

Further answering, respondent says he admits that he was entitled by law to be paid his reasonable expenses for travel and attendance when lawfully directed to hold court outside of the northern district of Florida, not exceeding \$10 per diem, to be paid upon his certificate by the United States marshal for the district in which the court was held, all as alleged in said article third; and respondent says that he was at the time specified in said article third absent from the said northern district of Florida and was engaged in holding court at Tyler, Tex., under and by virtue of an order in that respect made by the circuit judge of the fifth judicial circuit of the United States; and he alleges that he was necessarily absent from his district attending and holding court at the said Tyler, Tex., and in going to and returning from said Tyler, Tex., as many days as he certified to in any certificate made by him and presented to the United States marshal for the eastern district of Texas certifying to the amount of his reasonable expenses for travel and attendance while absent from his district to attend and hold the said court at Tyler, Tex.

Respondent says that he has not in his possession, and has not seen since the time it was presented to the said United States marshal for the eastern district of Texas, the certificate which he made at that time, setting forth his reasonable expenses for travel and attendance as aforesaid, and is not now able to remember or state the particular number of days specified in said certificate, representing the time he was absent from his district in attending and holding court at the said Tyler, Tex., but he says that whatever number of days may appear in said certificate as having been so certified to by him were the true number of days he was absent from his said district in attending and holding court at Tyler, Tex., in pursuance of the order of the circuit judge of the fifth judicial circuit, as above stated; and respondent says that he did receive from the United States marshal for the eastern district of Texas at or about the time stated in said article third a sum of money, as set forth in said certificate, the exact amount of which this respondent is not now able to remember or state, but which represented an amount equal to \$10 per diem for each of the days stated in said certificate during which this respondent had been absent from his district attending and holding court at the said Tyler, Tex.

Respondent denies the allegation in said article third contained wherein it is alleged that at the said time he so certified he well knew that he was forbidden by law to receive compensation for his necessary travel and attendance while holding court outside of his own district at the rate of \$10 per diem, as certified in the said certificate; and he denies that he falsely certified as set forth and alleged in said article third.

Respondent, for further answer, says that in all his acts and doings, and in the making of the certificate and receiving the sum of money therein certified to, as herebefore stated, he believed at the time, and still believes, that the true construction and the true intent and meaning of the law of the United States providing for the payment for his reasonable expenses for travel and attendance as aforesaid was, and is, as by him more fully set forth and stated in his answer herein to the first of the articles of impeachment presented against him herein; and with respect thereto he hereby reiterates and reaffirms all of the allegations and statements in said answer to said first article contained, and adopts the same as his further and complete answer to the said

article third; and asks that the said allegations and statements in said answer to the said first article shall be taken and accepted as his further and complete answer to the allegations of said article third, as fully and with the same force and effect as if they were herein specifically reiterated and set forth, and prays equal benefit therefrom as if the same were here again fully repeated.

ANSWER TO ARTICLE 4.

And the said Charles Swayne, named in the articles of impeachment, says that this honorable court ought not to have or take further cognizance of the fourth of said articles of impeachment so exhibited and presented against him, because he says the facts set forth in the said fourth article do not, if true, constitute an impeachable high crime and misdemeanor as defined in the Constitution of the United States.

And now, not waiving the foregoing plea to the jurisdiction of the honorable Senate of the United States, sitting as a court of impeachment, as to said fourth article, the said respondent, saving to himself all advantages of exception to said fourth article, for answer thereto saith:

He admits that he was duly appointed, confirmed, and commissioned as a district judge of the United States in and for the northern district of Florida, and that he had entered upon the duties of his office prior to 1893 and had continued in the performance of the duties and in the exercise of his office of judge up to the present time.

He denies that at the time specified in said article 4, to wit, A. D. 1893, he did unlawfully appropriate to his own use, without making compensation to the owner, a certain railway car belonging to the Jacksonville, Tampa and Key West Railroad Company, for the purposes stated in said article 4, or for any other purpose or purposes whatsoever; and as to the true facts of the transaction referred to in said article 4, he says that at about the time stated in said article the Jacksonville, Tampa and Key West Railroad Company was in the possession of a receiver, which said receiver was not appointed by this respondent, as alleged in said article, but was appointed by the Hon. Don A. Pardee, circuit judge in and for the fifth judicial circuit of the United States, in which appointment this respondent concurred. That a part of the regular equipment of said railroad company, at and before the appointment of a receiver therefor, consisted of a certain railroad car, generally known as an official car, which said car had been provided and was kept, as is and has been the custom generally throughout the United States in the carrying on and in the management of railway lines and systems, for the use of the officials of said railway; and respondent says said car was not a part of the equipment of said railroad kept or held for hire, or for the transportation of passengers therein over the lines of the said railroad, or elsewhere; but the same was provided and kept for the use and convenience of the officials of said road; and respondent says that it was the custom of the said railroad, as it was and is the general custom of the railroads of the country, to extend from time to time, when said car was not in use and not needed for railway purposes, the complimentary use of the same to friends and patrons of the said railroad. Respondent says that the porter who was in charge of said car, and who accompanied it upon the trip described in said article four, was the regular porter in charge of said car; that he was a regular employee of said company who was employed for the purpose of taking charge and care of said car throughout the year, and who remained in charge and custody of the same throughout the year whether it was in use or not; that he was so employed by the year on a regular stated, fixed compensation, payable monthly, and his wages remained the same and were paid by the company to him in the same amount during each and every month in the year, whether the said car was in use or not.

Respondent further says that at or about the time stated in said article 4 he was at Guyencourt, in the State of Delaware, and the managing official of the said railroad company, knowing of his desire to proceed from thence to Jacksonville, Fla., accompanied by certain members of his family, voluntarily, and without solicitation upon the part of this respondent, tendered the use of said car to this respondent for the purpose of making the trip.

Respondent says that at said time it was and had been the general custom prevailing among the railway lines and systems of the country to furnish, each to the other, transportation for the private or official cars of each of the said railroads over any of the lines of the others, together with transportation for whatsoever persons might be in the occupation of the same at the time; and respondent is informed, and believes, and so alleges the fact to be, that the managing official of the said railroad company had secured from the necessary connecting lines transportation of the nature and character as above set forth, whereby the said car was to be transported over the said lines as a matter of compliment from the one railroad

company to the other; and neither the transportation of the said car, or of the persons who occupied the same on its trip alleged in article 4, cost the said Jacksonville, Tampa and Key West Railroad anything; and the entire transportation of the said car and the persons therein at the time was absolutely without expense to the said last-named railroad company or to the receiver of the same; and in and about the transportation of the said car and the persons therein at the times there was no expense of any kind incurred or paid by the said last-named railroad company or its receiver except in this, to wit, that the said railroad company at the time of the said trip had placed certain provisions in and upon the said car, in a very small amount and of trifling cost, and there was used of the said provisions upon the said trip sufficient of the same for two meals to the parties occupying the said car on the said trip, and no more.

Respondent further alleges that he accepted the use of the said car for the said trip so voluntarily tendered to him as an act of courtesy which could in no manner or in any way enter into the administration of the affairs of the said railroad company under its said receivership.

Respondent says that as to the said two meals enjoyed by the occupants of the said car on the said trip, which said trip was only of the duration of about twenty-three hours; the value of the same was so trivial that it could not appear and did not appear in any account of the said receiver upon which he, as the judge of the said district court, might be called upon to pass; and respondent reiterates his allegation that the said trip and the use of the said car was without expense to the said railroad company or to the receiver thereof, and he says that the funds of the said Jacksonville, Tampa and Key West Railroad Company were in no wise diminished by reason of the use of the said car for the said trip.

Respondent further says that he did not, as alleged in said article 4, use the said car or make the said trip under a claim of right, but that the trip was made solely and because the use of said car and transportation for said trip had been so voluntarily tendered to him as aforesaid; and respondent denies that by reason of the premises he was guilty of any abuse of judicial power, or that his judicial actions were in any way influenced thereby, or that he was placed, as a public official, under any obligation, expressed or implied, to said railroad or the receiver thereof; and he says that the complimentary tender of said car and his acceptance of the same was a personal matter having no relation to or effect upon his official position or action.

ANSWER TO ARTICLE 5.

And the said Charles Swayne, named in the articles of impeachment, says that this honorable court ought not to have or take further cognizance of the fifth of said articles of impeachment so exhibited and presented against him, because he says the facts set forth in the said fifth article do not, if true, constitute an impeachable high crime and misdemeanor as defined in the Constitution of the United States.

And now, not waiving the foregoing plea to the jurisdiction of the honorable Senate of the United States, sitting as a court of impeachment, as to said fifth article, the said respondent, saving to himself all advantages of exception to said fifth article, for answer thereto saith:

He admits that he was duly appointed, confirmed, and commissioned as a district judge of the United States in and for the northern district of Florida, and had entered upon the duties of his office prior to the year 1893, and had continued in the performance of the duties and in the exercise of his said office of judge up to the present time.

He denies that at the time specified in said article 5 he did unlawfully appropriate to his own use, without making compensation to the owner, a certain railway car belonging to the Jacksonville, Tampa and Key West Railroad Company for the purpose stated in said article 5, or for any other purpose or purposes whatsoever; and as to the true facts of the transaction referred to in said article 5, he says that at about the time stated in said article the Jacksonville, Tampa and Key West Railroad Company was in the possession of a receiver, which said receiver was not appointed by this respondent, as alleged in said article, but was appointed by the Hon. Don A. Pardee, circuit judge in and for the fifth judicial circuit of the United States, in which appointment this respondent concurred; that a part of the regular equipment of said railroad company at and before the appointment of a receiver therefor consisted of a certain railroad car, generally known as an official car, which car had been provided and was kept, as is and has been the custom generally throughout the United States in the carrying on and in the management of railway lines and systems, for the use of the officials of said railroad; and respondent says said car was not a part of the equipment of said railroad kept or held for hire or for the transportation of passengers therein over the lines of the said railroad or elsewhere, but the same was

provided and kept for the use and convenience of the officials of said road; and respondent says that it was the custom of the said railroad, as it was and is the general custom of the railroads of the country, to extend, from time to time, when said car was not in use and not needed for railway purposes, the complimentary use of the same to friends and patrons of the said railroad.

Respondent says that the porter who was in charge of the said car, and who accompanied it upon the trip described in said article five, was the regular employee of said company, who was employed for the purpose of taking charge and care of said car throughout the year, and who remained in charge and custody of the same throughout the year whether it was in use or not; that he was so employed by the year on a regular, stated, fixed compensation, payable monthly, and his wages remained the same and were paid by the company to him in the same amount during each and every month during the year, whether the said car was in use or not.

Respondent says that at or about the time stated in said article 5 the managing official of the said railroad company, without solicitation upon the part of this respondent, tendered the use of said car as a convenience to this respondent and the friends who accompanied him, in making a trip over certain lines of connecting railway to the Pacific coast and returning from thence, as alleged in said article 5.

Respondent says that at said time it was and had been the general custom prevailing among the railway lines and systems of the country to furnish, each to the other, transportation or passage for the private or official cars of each of the said railroads over any of the lines of the others, together with transportation for whatsoever persons might be in the occupation of the same at the time; and respondent is informed and believes and so alleges the fact to be that the managing official of said railroad company had secured from the necessary connecting lines transportation of the nature and character as above set forth, whereby the said car was to be transported over the said lines as a matter of compliment from the one railroad company to the other; and neither the transportation of the said car or of the persons who occupied the same on its trip alleged in said article 5 cost the said Jacksonville, Tampa and Key West Railroad anything, and the entire transportation of the said car and the persons therein at the time was without expense to the said last-named railroad company or to the receiver of the same; and in and about the transportation of the said car and the persons therein at the time there was no expense of any kind incurred or paid by the said last-named railroad company or its receiver.

Respondent denies that the said car was supplied with any provisions by the said receiver, as alleged in said article 5, except in this, that there had remained upon the said car, at the time respondent began his said trip, a few provisions and supplies left over from some previous use of the car by the officials of the said railroad company; these certain provisions and supplies were of a very small amount and of trifling cost.

Respondent says that upon the said trip he provided all of the provisions and supplies of every kind and character used by himself and friends upon the entire trip; that he paid for the same, and that they were so supplied by him without any cost or expense to the said railroad or its receiver.

He further says that upon his return from said trip, when the said car was turned back to the possession of the said railroad company and said receiver, there were left upon said car by this respondent certain of the provisions and supplies so purchased by him and not used upon said trip, which said provisions and supplies were left in said car and were of more than of equal value to those that were in the car at the time this respondent commenced his trip as aforesaid.

Whereby he insists and alleges that the said railroad company did not incur any expense in and about his use of the said car, or in and about the consumption of supplies thereon, or in and about the transportation of the same in any way, of any sum whatsoever, and that the entire trip was so made without cost or expense to the said railroad company or its receiver.

Respondent further alleges that he accepted the use of the said car for the said trip so voluntarily tendered to him as an act of courtesy which could in no manner or in any way enter into the matter of the administration of the affairs of the said railroad company under its said receivership.

Respondent further says that none of the expenses whatever incurred in and about the said trip of any kind or character did or could appear in any account of the said receiver upon which he, as judge of the said district court, might be called upon to pass.

Respondent reiterates his allegation that the said trip and the use of the said car was without expense to the said railroad company, or to the receiver thereof; and he says that the funds of the said Jacksonville, Tampa, and Key West Railroad Company were in no wise diminished by reason of the use of the said car for the said trip.

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Respondent further says that he did not, as alleged in said article 5, use the said car or make the said trip under a claim of right, but that the trip was made solely because the use of said car and transportation for said trip had been so voluntarily tendered to him as aforesaid.

Respondent denies that by reason of the premises he was guilty of any abuse of any judicial power, or that his judicial acts were in any way influenced thereby, or that he was placed in any way, as a public official, under any obligation, express or implied, to said railroad or to the receiver thereof; and he says that the complimentary tendering of said car and his acceptance of the same was a personal matter, having no relation to or effect upon his official position or action.

ANSWER TO ARTICLE 6.

And the said Charles Swayne, named in said articles of impeachment, says that this honorable court ought not to have or take further cognizance of the sixth of said articles of impeachment so exhibited and presented against him, because, he says, the facts set forth in said sixth article do not, if true, constitute an impeachable high crime and misdemeanor as defined in the Constitution of the United States.

And now, not waiving the foregoing plea to the jurisdiction of the honorable Senate of the United States, sitting as a court of impeachment, as to said sixth article, the said respondent saving to himself all advantages of exceptions to said sixth article, for answer thereto saith:

He admits that prior to the year 1900 he had been duly appointed, confirmed, and commissioned as judge of the United States in and for the northern district of Florida, and had entered upon the duties of his office, and that he was in the exercise of his office as judge as aforesaid at all times in the said article specified and as therein alleged.

The respondent denies that he did not acquire a residence in the northern district of Florida and did not, within the intent and meaning of the five hundred and fifty-first section of the Revised Statutes of the United States, reside in said district from the 23d day of July, 1894, to the 1st day of October, 1900; and denies that he violated said section; and denies that he was and is guilty of a high misdemeanor in office as charged in said article 6.

The respondent further says that his residence now is in Pensacola, in the northern district of Florida, and that such residence began shortly after the passage of the act of July 23, 1894, which excluded from said district St. Augustine, his previous residence, and has continued down to the present time, his local abode now being at No. 13 West La Rua street, Pensacola, where he has resided since October 1, 1903; and he says his local abode prior to October 1, 1903, and from and after October 1, 1900, was in the Simmons cottage on Belmont street, Pensacola; and that his local abode prior to October 1, 1900, and from and after the beginning of his residence in Pensacola, was at times at the Escambia Hotel and at times at the boarding house of Capt William H. Northrop on West Gregory street in said city.

The respondent says that while he lived at West La Rua street and in the Simmons cottage his family lived with him; at other times they remained at his former home in St. Augustine or went to different places in Delaware, or visited New Orleans or traveled in Europe, and occasionally members of the family visited him at the Escambia Hotel and at the house of said Captain Northrop.

The respondent also says that he went from Pennsylvania to Florida in 1885, to practice law, and lived in Sanford and afterwards in Kissimmee; that on June 1, 1889, during the recess of Congress, he was appointed and commissioned district judge for the northern district of Florida, and on the 1st day of April, 1890, was re-commissioned after confirmation by the Senate; and that in October, 1890, he became a resident of St. Augustine, Fla., and with his family began living in a rented house furnished by himself.

The respondent says that after the passage of the act of July 23, 1894, when he became a resident of Pensacola, it was deemed advisable that his family should not wholly give up housekeeping in the house in St. Augustine until a suitable and desirable house could be found within the limits of the said northern district as reduced by said act; and the respondent made repeated efforts to find such a house, but without immediate success.

The respondent says that he had at all times, from his first residence in Florida in 1885, been in the habit, with his family, of visiting each summer in Delaware, at the residence of his father and mother, and this custom continued in 1894 and always afterwards.

Shortly after the passage of the act of 1894 the respondent began holding court, under due assignment, in Alabama, Louisiana, and Texas; and at various times, beginning in New Orleans in April, 1895, he has held court at Birmingham, Huntsville, New Orleans, Baton Rouge, Dallas, Fort Worth, Graham, Waco, and Tyler.

During the winter of 1897-98 his family was with him in New Orleans. On July 9, 1898, the respondent with his family sailed for Europe, and in September of that year the respondent returned, leaving his family in Germany, went to Pensacola, held court there, and then, by direction of the circuit judge, proceeded to New Orleans and other points to hold court, his family returning from Europe in July, 1899.

Before October 1, 1900, the respondent had found and rented the Simmons cottage on Belmont street, Pensacola, and on that date his family came there to live, the house in St. Augustine in the years 1897, 1898, 1899, and 1900 having been rented with the furniture of the respondent to various tenants.

So the respondent says that, notwithstanding the dismemberment, out of undeserved hostility to him, of the northern judicial district, by taking 20 large counties therefrom and leaving it a district comprising not a third of the State, with very little judicial business to be performed therein, while enlarging the other district so as to make it embrace two-thirds of the State and three-fourths of the business of the State, he proceeded within a reasonable time to comply with his obligation under section 551 of the Revised Statutes and the act of July 23, 1894, to remove his residence from the city of St. Augustine, which was in his original but not in his reduced district, and to make a new residence within the latter, and to promptly perform all his official duties therein; nor have his occasional absences to see his family while they tarried at St. Augustine or elsewhere, and to hold court in Alabama, Louisiana, and Texas, and to visit his mother's home in Delaware during the summers, and to travel one summer in Europe, in any way embarrassed or hindered the public business committed to his charge; nor has the delay of his family at St. Augustine and while wintering at New Orleans and in Europe, and sojourning in Delaware before coming for constant living with him at his new home, in any way impaired the legality, good faith, sufficiency, and completeness of his residence since 1894 at Pensacola, in the northern district of Florida.

ANSWER TO ARTICLE 7.

And the said Charles Swayne, named in said articles of impeachment, says that this honorable court ought not to have or take further cognizance of the seventh of said articles of impeachment so exhibited and presented against him, because he says the facts set forth in said seventh article do not, if true, constitute an impeachable high crime and misdemeanor as defined in the Constitution of the United States.

And now, not waiving the foregoing plea to the jurisdiction of the honorable Senate of the United States, sitting as a court of impeachment, as to said seventh article, the said respondent, saving to himself all advantages of exception to said seventh article, for answer thereto saith:

He admits that prior to the year 1900 he had been duly appointed, confirmed, and commissioned as judge of the United States in and for the northern district of Florida and had entered upon the duties of his office, and that he was in the exercise of his office as judge, as aforesaid, at all times in the said article specified and as therein alleged.

The respondent denies that he did not acquire a residence in the northern district of Florida and did not, within the intent and meaning of the five hundred and fifty-first section of the Revised Statutes of the United States, reside in said district from the 23d day of July, 1894, to the 1st day of January, 1903, and denies that he violated said section; and denies that he was and is guilty of a high misdemeanor in office, as charged in said article 7.

The respondent further says that his residence now is in Pensacola, in the northern district of Florida, and that such residence begun shortly after the passage of the act of July 23, 1894, which excluded from said district St. Augustine, his previous residence, and has continued down to the present time; and the respondent reiterates and reaffirms all the allegations and statements contained in his answer to the sixth of the articles of impeachment presented against him, and adopts the same as his further and complete answer to said article 7, and asks that said allegations and statements in said answer to said article 6 shall be taken and accepted as his further and complete answer to the allegations of said article 7, as fully and with the same force and effect as if they were herein specifically reiterated and set forth, and prays equal benefit therefrom as if the same were here again fully repeated.

ANSWER TO ARTICLE 8.

And the said respondent, saving to himself all advantages of exception or otherwise to article 8 of the said articles of impeachment, for answer thereto saith:

He admits that prior to the 12th day of November, A. D. 1901, he had been duly appointed, confirmed, and commissioned as a district judge of the United States in

and for the northern district of Florida, and had entered upon the duties of his office prior to said date, and continued in the performance of the duties and in the exercise of his office of judge up to the present time, and he says that at all the times mentioned in said article 8 he was exercising and performing the duties of a district judge in and for the northern district of Florida, and that on the 12th day of November, A. D. 1901, he was holding a session of the district and circuit court of said district at the city of Pensacola, in the State of Florida, and he admits that on said date he did adjudge guilty of contempt of court and impose a fine of \$100 upon and commit to prison for a period of ten days one E. T. Davis, an attorney and counselor at law, as set forth in said article 8, but he denies said judicial action on his part was malicious or unlawful, and, on the contrary, he insists and asserts that said judgment was rendered and said sentence imposed by him from a high sense of judicial and public duty, and that upon the proceedings then pending and heard before him he could not have done otherwise than to have adjudged the said E. T. Davis guilty of the contempt of court stated in said article 8.

Simeon Belden and Louis P. Paquet, attorneys and counselors at law, instituted in the Respondent, further answering, says that on the 15th day of February, 1901, Sim-said United States circuit court in and for the northern district of Florida a suit in ejectment in favor of one Florida McGuire, and against the Pensacola City Company and twenty or more persons named as defendants. Said suit was brought to recover the possession of a tract of land known as the Chaveaux tract, within the limits of the city of Pensacola, Fla., containing 300 arpents, more or less, and divided into lots, blocks, and streets; that prior to the November term, 1901, of said court the said cause by pleadings therein was at issue and upon the trial docket, subject to call for trial at said term, which said term began on the 5th day of November, 1901, at Pensacola, Fla.

Respondent says that prior to November 5, 1901, the said attorneys, Simeon Belden and Louis P. Paquet, as attorneys for the said Florida McGuire, presented to respondent as judge of the said court, a suggestion that he was disqualified to try the said case, because it was said that respondent claimed some right, title, or interest in and to some portion of the said real estate in litigation in said suit; that upon the opening of said court on the 5th day of November, 1901, this respondent presiding therein as judge, respondent stated from the bench that he had been asked to recuse himself on the trial of the said case so pending as aforesaid, for the reason that he had, or claimed to have, some right, title, or interest in the subject-matter in said case involved, to wit, the said real estate.

Respondent then and there made the statement in open court, which statement was and is true, that he had and claimed no right or interest whatever in the said subject-matter of said case, to wit: Said real estate or any part thereof, and this respondent thereupon declined and refused to recuse himself as requested, which action of respondent was right, proper, and consistent with the dignity of the said court, wherein he was presiding as judge; that upon Saturday, the 9th day of November, 1901, said court then and there being in session, the criminal docket was completed, and the court took up the civil docket of said court and began to call the cases thereon to ascertain as to whether or not the same were or would be ready for trial.

At said time the said Louis P. Paquet, the said Simeon Belden, and E. T. Davis, named in said article eight, all then and there being attorneys at law, and all of them members of the bar and officers of the said court, and all of them appearing, or being interested, as attorneys in the said case then and there pending, urged a postponement of the trial of the said case upon the ground that they were not ready with their witnesses and that the said Louis P. Paquet had a matter of business to attend to at New Orleans on the following Tuesday, November 12.

Respondent at said time announced his willingness as judge of said court to postpone the trial of the case in accordance with the request of counsel for Florida McGuire, but the counsel for the defendants in said case, then being present, insisted that there was no good cause shown why a postponement of the trial should be had, and further insisted that the trial should proceed when the said case was reached. No showing in writing having been made, and no showing at all having been made except as above stated, this respondent announced that the said case would be called for trial on the following Monday, November 11, and would then be tried unless the plaintiff in said case should show cause why a postponement of said trial should be ordered.

Said Louis P. Paquet, Simeon Belden, and E. T. Davis, then being present and being attorneys of record or acting as attorneys in said case, stated in open court that they would present to the court a showing on the said Monday morning why a postponement of the trial should be had.

Respondent further says that he adjourned his said court on the said Saturday, the 9th day of November, 1901, at about 6 o'clock p. m. until 10 o'clock a. m. of the following Monday.

Respondent says that thereupon the said Louis P. Paquet, Simeon Belden, and E. T. Davis, officers and attorneys of the said court, retired from said court and confederated and conspired together to obstruct, thwart, interfere with, hinder, and delay the due and regular course of justice by the commencement of a suit in a State court of Florida, and by newspaper publications, whereby they would cause it to appear that this respondent had and claimed to have some right, title, or interest in and to one certain portion of the tract of land the subject-matter of said case in ejectment, the said attorneys and each and all of them then and there well knowing that this respondent did not have and did not claim to have any right, title, or interest in and to any portion of the said land, the subject-matter of the said ejectment case; and so confederating and conspiring together, they began a suit in a State court, to wit, the circuit court of Escambia County, Fla., in the name of the said Florida McGuire against this respondent, as a defendant in said suit, and caused to be issued out of the said court a writ against this respondent summoning him to be and appear in the said State court to make answer therein to the allegation that he had and claimed some right, title, and interest in and to a portion of the said tract of land, the subject-matter of said suit in ejectment, then pending in the said United States district court, which said writ was served upon this respondent on the evening of said Saturday, November 9, 1901, at about 9 o'clock.

Respondent says that at all of said times each of the three persons above named well knew that this respondent did not have and did not claim to have any right, title, or interest whatsoever in any of the said real estate, the subject-matter as aforesaid in the said suit in ejectment in the said United States court, and respondent says that the said three persons so conspiring and confederating together brought said suit and caused said writ to be issued and served upon respondent, well knowing the facts aforesaid, for the sole purpose of placing this respondent in such a position upon the record and before the bar and people that he could not preside in the said court upon the trial of the said ejectment case and would thereby be compelled to continue the same over to some other term of court when another judge could be present and conduct the trial of the same.

Respondent says that the said three persons further confederating and conspiring together for the purposes aforesaid, and to obstruct, interfere with, hinder, and delay the due and proper administration of justice in the said circuit court of the United States, further caused to be prepared and published in the Daily Press of Sunday morning, November 10, 1901, a newspaper published and in general circulation in the city of Pensacola, Fla., an article as follows:

'Judge Swayne summoned as party to the suit in case of Florida McGuire v. Pensacola Company et al.

"A decided move was made in the now celebrated case of Mrs. Florida McGuire, who is the owner, by inheritance, and claims the possession of what is known as the 'Rivas tract,' in the eastern portion of the city, near Bayou, Tex., by the filing of a praecipe for summons, through her attorneys, ex-Attorney-General Simeon Belden, Judge Louis P. Paquet, of New Orleans, and E. T. Davis, of this city, in the circuit court of Escambia County, in an ejectment proceedings for possession of block 91, as per map of T. C. Watson, which is part of the property which is claimed by Mrs. Florida McGuire, and which it is alleged that Judge Swayne purchased from a real estate agent in this city during the summer months, and which is a part of the property now in litigation before him.

"The summons was placed in the hands of Sheriff Smith late last night for service."

All of which said acts, as hereinbefore stated, constituted a contempt of said United States district court upon the part of the said three persons, and of each of them, attorneys and counselors at law and officers of said court; impugned the motives and the honesty and integrity of this respondent as a judge; placed upon the public records of a court and in the public press a false and untrue statement, which, if true, would have disqualified and prevented this respondent, as judge of the said United States circuit court, from proceeding to, or sitting in, the trial of the said ejectment case, then and there pending and called for trial; constituted an attempt to intimidate this respondent in the performance of his judicial duties; sought to compel him to continue said ejectment suit to another term of court, and thereby deny to the parties defendant in said ejectment suit their right to a speedy trial therein in said court and before this respondent as presiding judge thereof; greatly tended to obstruct, prevent, hinder, delay, and embarrass the due administration of justice in said court, and to subject the said court and the presiding judge thereof, this respondent, to public criticism, contumely, and contempt; and respondent says all of said confederating and conspiring, and all said acts of the three said persons, constituted a violation of their oaths and of their official duties as attorneys and officers of said court.

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Respondent says that thereafter, to wit, on the 11th day of November, 1901, said United States circuit court being then and there in session at Pensacola, Fla., one W. A. Blount, an attorney of said court, presented and filed in said court the following motion or information in writing:

"And now comes W. A. Blount, an attorney and counselor at law of this court, and practicing therein, and as amicus curiæ, and moves the court to cite Simeon Belden, Louis Paquet, and E. T. Davis, attorneys and counselors of this court, to show cause before this court, at a day and hour to be fixed by the court, why they shall not be punished for contempt of the court, in causing and procuring, as attorneys of the circuit court of Escambia County, Fla., a summons in ejectment, wherein Florida McGuire is plaintiff and the Hon. Charles Swayne is defendant, to be issued from said court and served upon the judge of this court, to recover the possession of block 91 in the Cheveaux tract, in the city of Pensacola, Fla., a tract of land involved in a controversy in ejectment then depending in this court, in a case wherein the said Florida McGuire was plaintiff and the Pensacola City Company et al. were defendants, upon the grounds:

"1. That the said suit in ejectment against the judge of this court was instituted after a petition to this judge to recuse himself in the said case of Mrs. Florida McGuire v. Pensacola City Company et al. had been submitted to the court on November 5, 1901, and denied, and after the said judge had stated in open court and in the presence of the said counsel, Simeon Belden and Louis Paquet, that an allegation of the said petition that he or some member of his family were interested in or owned property in said tract was untrue, and had stated that he had refused to permit a member of his family to buy land in said tract, because the said suit of Florida McGuire involving the title to the said tract was in litigation before him, the said judge.

"2. That after the said declaration of the said judge the said counsel were aware that neither the said judge nor any member of his family were the owners of or interested in any part of the said tract and had no reason whatever to believe that he or they were so interested, and knew, or could easily have known, that the said block was not in the possession or control of anyone, but was entirely unoccupied.

"3. That the said suit against the said judge was instituted on Saturday night, the 9th instant, after 6 o'clock, and after the court had overruled the motion of the said attorneys to postpone the trial of the case of Florida McGuire v. Pensacola City Company et al. for a week or more, and after the said judge had announced to the said counsel that he would call the case for trial on Monday, November 11, 1901, and would then try the case, unless counsel for plaintiff made a showing why he should not so try, and the said counsel had announced that they would make such showing.

"4. That the said E. T. Davis was, before the instituting of the said suit against the said judge, cognizant of all the facts herein set forth.

"W. A. BLOUNT,
"An Attorney of this Court.

"NOVEMBER 11, 1901."

That thereupon this respondent, as presiding judge of said court, caused to be cited before the said court the said Simeon Belden, Louis P. Paquet, and E. T. Davis to respond or answer to the said charge of contempt made against them, and to purge themselves of said alleged contempt, if possible; and thereafter, to wit, on the 12th day of November, 1901, said Simeon Belden and E. T. Davis appeared in said court, pleaded to the charge of contempt preferred against them, and, issue being joined, a hearing was had upon the said charge of contempt; all the testimony offered by either party to said proceedings was heard, as well as arguments for the said persons so charged with contempt, and upon full and careful consideration of the said evidence presented and the law in the case, this respondent, as presiding judge of said court, decided that the said Simeon Belden and E. T. Davis, and each of them, were guilty, as charged, of a substantial contempt of the dignity and good order of the said court, and proceeded to impose a sentence upon each of them, which said sentence directed that each of said persons should pay into the court a fine of \$100 and be committed to prison for a period of ten days.

Respondent further says that thereafter the said Simeon Belden and E. T. Davis each sued out a writ of habeas corpus, returnable before the Hon. Don. A. Pardee, United States circuit judge in and for the fifth judicial circuit, at dates therein named, and hearings upon said writs of habeas corpus were thereafter had before the said circuit judge, where each of said parties was fully heard, and upon full and careful consideration of the said issues involved in said habeas corpus proceedings the said circuit judge, on the 7th day of December, 1901, held that the said Simeon Belden and E. T. Davis had both been justly and properly adjudged guilty of contempt by

this respondent as judge of the said district court of the northern district of Florida; that the said court had jurisdiction to hear said contempt proceedings; that the evidence disclosed that a contempt of court had been committed by each of the said two persons, and, among other things in said opinion, decided as follows:

"The relator is an attorney and counselor of the United States circuit court for the northern district of Florida, and as such one of the officers of the court within the intent and meaning of the above statute. As such officer, he was and is charged with conduct in and out of court which, if accompanied with malicious intent or had the effect to embarrass and obstruct the administration of justice, was such misbehavior as amounted to contempt of court."

* * * * *

"It is conceded that this sentence is beyond the jurisdiction of the court, which, under section 725, above quoted, is limited to power to imprison or to fine, but not both. But the question is whether the relator can complain of this sentence until he has performed that part which the court had power to impose. The court had power to impose a sentence of imprisonment in the county jail for ten days: also had power to impose a fine of \$100. Is the relator injured until he has either suffered the imprisonment or paid the fine?"

This question has been somewhat considered in the Supreme Court. In *Ex parte Swan* (supra) the court says:

"It is further contended that the court exceeded its power in that the payment of costs was required, because the costs were in the nature of a fine, and therefore the punishment inflicted was both fine and imprisonment. Under section 970 of the Revised Statutes, when judgment is rendered against a defendant in a prosecution for any fine or forfeiture, he shall be subject to the payment of costs, and on every conviction for any other offense not capital, the court may, in its discretion, award that the defendant shall pay the costs of the prosecution; and as contempt of court is a specific criminal offense, it is said that the judgment for payment of costs would appear to be within the power of the court, although by section 725 it is provided that contempts of the authority of courts of the United States may be punished 'by fine or imprisonment, at the discretion of the court.' But, be that as it may, the sentence here was that the petitioner be imprisoned 'until he returns to the custody of the receiver the barrel taken by him from the warehouse without warrant of law. And when that has been surrendered, that he suffer a further imprisonment thereafter in said county jail for three months and until he pay the costs of these proceedings.' As the prisoner has neither restored the goods nor suffered the imprisonment for three months, even if it was not within the power of the court to require payment of costs and its judgment to that extent exceeded its authority, yet he can not be discharged on habeas corpus until he has performed so much of the judgment or served out so much of the sentence as it was within the power of the court to impose. (*Ex parte Lange*, 18 Wall., 163; *Ex parte Parks*, 93 U. S., 18.)

* * * * *

"Considering these authorities and that this writ is sued out and is returned before one of the judges of the circuit for the northern district of Florida, it would seem to be proper to discharge this writ, leaving the relator to elect whether he will pay the fine or suffer the imprisonment, and then to seek relief from the balance of the sentence. Another course to follow would be to adjudge the sentence imposed to be beyond the law and remand the relator to the circuit court of the northern district of Florida to be sentenced within the law for contempt, of which he has been adjudged guilty.

"The case shows that the relator has suffered some portion of the sentence of imprisonment, for this reason, and under all the circumstances of the case, I deem it best, and the relator can not complain, to hold that when the relator shall have satisfied either the imprisonment or fine adjudged against him he will be entitled to his discharge.

"For these reasons the writ of habeas corpus herein sued out is discharged.

"Circuit Judges McCormick and Shelby heard the argument in this case, and concur in this opinion.

"DON. A. PARDEE, *Circuit Judge*."

And thereupon the said circuit judge made an order in the premises as follows:

"United States fifth judicial circuit. Proceedings before Don. A. Pardee, circuit judge, in chambers, New Orleans, La. *Ex parte* Elsa T. Davis, *ex parte* Simeon Belden. On writs of habeas corpus.

"Writs of habeas corpus in favor of the above-named relators having been issued on the order of the undersigned circuit judge, returnable in chambers in the city of

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New Orleans, and returns having been made to the said writs, and the issue presented having been argued—

"It is now, for the reasons herein filed, ordered and adjudged that the said writs be discharged and that the relators be remanded to the custody of the jail keeper of Escambia County, Fla., holding for the marshal for the northern district of Florida at Pensacola.

"And as the said relators, pending proceedings on above-mentioned writs, have been enlarged upon bonds conditioned upon their appearance and to obey orders issued,

"It is ordered that they surrender themselves to said jailer, or said marshal, on or before noon of Monday, the 8th day of December, 1901.

"The costs of these proceedings to be paid by said relators.

"DON. A. PARDEE, *Circuit Judge*.

"DECEMBER 7, 1901."

Whereby respondent insists and alleges that the said proceedings against the said Simeon Belden and E. T. Davis, for contempt, as aforesaid, came to an end, and a final adjudication was had therein.

Respondent admits that it was decided by the said circuit judge that this respondent, as judge of the said circuit court of the northern district of Florida, in imposing sentences upon the said Simeon Belden and E. T. Davis, was mistaken in his understanding of the law of the case in this, and in this only, to wit: That respondent believed that it was within his power and discretion as said judge to impose both a fine and sentence of imprisonment upon each of the said two persons adjudged guilty of contempt as aforesaid; whereas it was held by the said circuit judge that the statute of the United States in that respect made and provided authorized a sentence of fine or imprisonment, and that both fine and imprisonment could not be imposed in any one case; but respondent says that whatever mistake he made in that respect was made without malice and in the belief that such a sentence could be properly imposed under the law, and respondent should not be held to have committed a high crime or misdemeanor as alleged in said article eight by reason of the fact that he may have been mistaken in his construction of the law, whereby he imposed a sentence of both fine and imprisonment; and he not only alleges that he was free from any bias, prejudice, or desire to injure either of the said two persons, but that all his acts and doings in and about the trial of said case, the decision thereon, and the imposing of sentences therein, were prompted solely by his desire to maintain the dignity and authority of his said court and to punish such acts of contempt of its authority as tended to hinder, delay, obstruct, and impede the due administration of justice therein, and to subject the said court and the judge thereof to public criticism, contumely, and contempt.

Respondent alleges that the said United States circuit court, sitting in and for the northern district of Florida, had jurisdiction of the said contempt proceedings; that due process of law was issued therein; that the said Simeon Belden and E. T. Davis appeared in said court and were accorded every right to be heard by counsel learned in the law to present evidence and to purge themselves of said contempt if they could do so in accordance with the facts and the law of the case; and respondent alleges that they did not so purge themselves, or either of them, of said contempt.

And respondent insists that he was and is blameless in the premises; that he performed his duty, and his whole duty, in all the said proceedings; that he was in no way guilty of an abuse of judicial power or of a high misdemeanor in office, and that the said proceedings had and held before him, and the judgment resulting therefrom, were all in accordance with the law, except as hereinbefore explained; and any failure of this respondent as presiding judge of the said United States district court to have adjudged said Simeon Belden and E. T. Davis guilty of contempt, and to have punished them therefor, in view of the testimony as presented and the law of the case, would have greatly tended to destroy the dignity and authority of the said court; to obstruct, hinder, and delay the due course of justice therein, and to bring said court into public disfavor and just contempt.

ANSWER TO ARTICLE 9.

And the said respondent, saying to himself all advantages of exception or otherwise to article 9 of the said articles of impeachment, for answer thereto saith:

He admits that prior to the 12th day of November, A. D. 1901, he had been duly appointed, confirmed, and commissioned as a district judge of the United States in and for the northern district of Florida and had entered upon the duties of his office prior to said date, and continued in the performance of the duties and in the exercise

of his office of judge up to the present time, and he says that at all the times mentioned in said article 9 he was exercising and performing the duties of a district judge in and for the northern district of Florida, and that on the 12th day of November, A. D. 1901, he was holding a session of the circuit court at the city of Pensacola, in the State of Florida; and he admits that on said date he did adjudge guilty of contempt of court and impose a fine of \$100 upon, and commit to prison for a period of ten days, one E. T. Davis, an attorney and counselor at law of said court, as set forth in said article 9; but he denies that said judicial action on his part was malicious or unlawful, and, on the contrary, he insists and asserts that said judgment was rendered and said sentence imposed by him from a high sense of judicial and public duty, and that upon the proceedings then pending and heard before him he could not have done otherwise than to have adjudged the said E. T. Davis guilty of the contempt of court stated in said article 9.

Respondent further says that all of the acts and charges as made in said article 9 are the same identical acts and charges as made in the aforesaid article 8; and he says that for a more full and complete answer to the said article 9 he hereby reiterates and reaffirms all of his allegations and statements in his answer to the said article 8, and adopts the same as his further and complete answer to said article 9, and asks that the said allegations and statements in said answer to the said eighth article shall be taken and accepted as his further and complete answer to the allegations of said article 9 as fully and with the same force and effect as if they were herein specifically reiterated and set forth, and prays equal benefit therefrom as if the same were again fully reiterated.

ANSWER TO ARTICLE 10.

And the respondent, saving to himself all advantages of exception or otherwise to article 10 of the said articles of impeachment, for answer thereto saith:

He admits that prior to the 12th day of November, A. D. 1901, he had been duly appointed, confirmed, and commissioned as a district judge of the United States in and for the northern district of Florida, and had entered upon the duties of his office prior to said date, and continued in the performance of the duties and in the exercise of his office of judge up to the present time; and he says that at all the times mentioned in said article 10 he was exercising and performing the duties of a district judge in and for the northern district of Florida; and that on the 12th day of November, A. D. 1901, he was holding a session of the circuit court at the city of Pensacola, in the State of Florida; and he admits that on said date he did adjudge guilty of contempt of court and impose a fine of \$100 upon, and commit to prison for a period of ten days, one Simeon Belden, an attorney and counselor at law of said court, as set forth in said article 10; but he denies that said judicial action on his part was malicious or unlawful; and, on the contrary, he insists and asserts that said judgment was rendered and said sentence imposed by him from a high sense of judicial and public duty, and that upon the proceedings then pending and heard before him he could not have done otherwise than to have adjudged the said Simeon Belden guilty of the contempt of court stated in said article 10.

Respondent, further answering, says that all the allegations made in the said article 10 refer to the same proceedings in all respects as those charged in articles 8 and 9 aforesaid; that the said E. T. Davis named in said articles 8 and 9 and the said Simeon Belden named in article 10 jointly committed all of the acts and participated in all the proceedings by trial or otherwise set forth and described in respondent's answer to article 8 aforesaid, except in this, to wit, that the sentence imposed upon the said Simeon Belden was a separate sentence from the sentence imposed upon said E. T. Davis, and he says that for a more full and complete answer to said article 10 he hereby reiterates and reaffirms all of the allegations and statements in his answer to the said article 8, and adopts the same as his further and complete answer to said article 10; and asks that the said allegations and statements in said answer to the said eighth article shall be taken and accepted as his further and complete answer to the allegations of said article 10 as fully and with the same force and effect as if they were herein specifically reiterated and set forth, and prays equal benefit therefrom as if the same were here again fully reiterated.

ANSWER TO ARTICLE 11.

And the respondent, saving to himself all advantages of exception or otherwise to article 11 of the said articles of impeachment, for answer thereto saith:

He admits that prior to the 12th day of November, A. D. 1901, he had been duly appointed, confirmed, and commissioned as a district judge of the United States in and for the northern district of Florida and had entered upon the duties of his office

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prior to said date, and continued in the performance of the duties and in the exercise of his office of judge up to the present time; and he says that at all the times mentioned in said article 11 he was exercising and performing the duties of a district judge in and for the northern district of Florida, and that on the 12th day of November, A. D. 1901, he was holding a session of the circuit court at the city of Pensacola, in the State of Florida, and he admits that on said date he did adjudge guilty of contempt of court and impose a fine of \$100 upon and commit to prison for a period of ten days one Simeon Belden, an attorney and counselor at law of said court, as set forth in said article 11; but he denies that said judicial action on his part was malicious or unlawful, and, on the contrary, he insists and asserts that said judgment was rendered and said sentence imposed by him from a high sense of judicial and public duty, and that upon the proceedings then pending and heard before him he could not have done otherwise than to have adjudged the said Simeon Belden guilty of the contempt of court stated in said article 11.

Respondent further answering says that all of the allegations made in the said article 11 refer to the same proceedings in all respects as those charged in articles 8, 9, and 10 aforesaid; that the said E. T. Davis, named in said articles 8 and 9, and the said Simeon Belden, named in article 11, jointly committed all of the acts and participated in all the proceedings by trial or otherwise set forth and described in respondent's answer to article 8 aforesaid, except in this, to wit, that the sentence imposed upon the said Simeon Belden was a separate sentence from the sentence imposed upon said E. T. Davis; and he says that for a more full and complete answer to the said article 11 he hereby reiterates and reaffirms all of the allegations and statements in his answer to the said article 8, and adopts the same as his further and complete answer to article 11, and asks that the said allegations and statements in said answer to the said eighth article shall be taken and accepted as his further and complete answer to the allegations of said article 11, as fully and with the same force and effect as if they were herein specifically reiterated and set forth, and prays equal benefit therefrom as if the same were here again fully reiterated.

ANSWER TO ARTICLE 12.

And the respondent, saving to himself all advantages of exception or otherwise to article 12, of the said articles of impeachment, for answer thereto, saith:

He admits that prior to the 9th day of December, A. D. 1902, he had been duly appointed, confirmed, and commissioned as a district judge of the United States in and for the northern district of Florida, and had entered upon the duties of his office prior to said date, and continued in the performance of the duties and in the exercise of his office of judge up to the present time; and he says that at all times mentioned in said article 12 he was exercising and performing the duties of a district judge in and for the northern district of Florida; and that on the 9th day of December, A. D. 1902, he was holding a session of the said district court; and he admits that on said date he did adjudge guilty of contempt of court and commit to prison for a period of sixty days one W. C. O'Neal, as set forth in said article 12, but he denies that said judicial action on his part was malicious or unlawful, and on the contrary he insists and asserts that said judgment was rendered and said sentence imposed by him from a high sense of judicial and public duty, and that upon the proceedings then pending and heard before him he could not have done otherwise than to have adjudged the said W. C. O'Neal guilty of the contempt of court stated in said article 12.

Respondent, further answering, says that on the 29th day of August, 1902, one Scarritt Moreno filed in the said district court of the United States in and for the northern district of Florida his petition asking to be adjudged a bankrupt and to obtain the benefits of the acts of Congress of the United States relating to bankruptcy; and the said court, having jurisdiction in the premises, took such proceedings in relation thereto that by an order duly made the said petitioner was adjudged a bankrupt, and A. Greenhut was duly appointed trustee of the estate of the said bankrupt on the 15th day of September, 1902; that the said A. Greenhut accepted the said appointment and filed his bond as such trustee, which said bond was duly approved as provided for by law, and on said date last named the said A. Greenhut duly took the oath of office and qualified as required by law, and thereby became an officer of the district court of the United States in and for the northern district of Florida, to wit, trustee for the estate of the above-named Scarritt Moreno, bankrupt as aforesaid, and continued as such officer of said court during all the times hereinafter referred to in this answer; that on the 10th day of November, A. D. 1902, the said A. Greenhut, an officer of said court, as aforesaid, filed and presented in the said court, while said court was duly in session in the city of Pensacola, Fla., in said

northern judicial district of Florida, a certain information in writing and in words and figures as follows, to wit:

In the United States district court, northern district of Florida, at Pensacola, in the matter of Scarritt Moreno, bankrupt.

"UNITED STATES OF AMERICA,

"Northern district of Florida, city of Pensacola, ss:

"Adolph Greenhut, of the city of Pensacola, in the district aforesaid, being duly sworn according to law, on his oath doth depose and say:

"That heretofore, on the 29th day of August, 1902, one Scarritt Moreno filed in the honorable the district court of the United States in and for the northern district of Florida, at Pensacola, his petition to be adjudicated a bankrupt and to obtain the benefits of the acts of Congress of the United States relating to bankruptcy. That thereafter such proceedings were had upon said petition in said United States district court; that on September 15, 1902, affiant was duly appointed trustee of the estate of the above-named Scarritt Moreno, bankrupt, which said appointment of deponent as trustee was then and there approved by the said court.

"That thereafter, to wit, on the day and year last aforesaid, affiant accepted said appointment and filed his bond as such trustee, which said bond was duly approved by E. K. Nichols, esq., referee in bankruptcy, and at the same time deponent took the oath of office as required by law, and thereupon he became charged with the duties and clothed with the authority appertaining to a trustee in bankruptcy under the laws of the United States, and from thence hitherto has occupied and is now occupying said trusteeship, amenable to and subject to the orders of the said the honorable district court of the United States in and for the northern district of Florida.

"That affiant was, by counsel, advised that it was his duty, as trustee of the estate of said Scarritt Moreno, as aforesaid, to institute a certain suit or action in equity for the purpose of having certain property purchased by the said Scarritt Moreno, bankrupt, the title to which was taken by the said Scarritt Moreno in the name of his wife, brought into the said United States district court as a part of the estate of said bankrupt, to be there administered as required by law, and for the further purpose of having certain mortgages on said property decreed and declared to be null, void, and of no effect. That thereupon, in the afternoon of Saturday, the 18th day of October, 1902, through his counsel, he, as trustee as aforesaid, and in the performance of his duty as aforesaid as an officer of the said United States district court, caused to be filed in the circuit court of Escambia County, State of Florida, his certain bill of complaint, therein and thereby, among other things, seeking the relief above referred to.

"That by the advice of his counsel Scarritt Moreno, Susie R. Moreno, his wife, the American National Bank of Pensacola, the Citizen's National Bank of Pensacola, and others, were made parties defendant in and to said bill of complaint, and that upon the filing of said bill of complaint suit was commenced against the defendants named in said bill of complaint. That all of the proceedings above referred to were taken and had by affiant as an officer of the district court of the United States in and for the northern district of Florida, and in the due, proper, and faithful performance of his duty as such officer, and were necessarily had and taken under the law and his oath of office.

"That on Monday, the 20th day of October, A. D. 1902, between the hours of 9 and 10 o'clock a. m., affiant was standing in the door of the office of the store owned and conducted by him, situated at No. —, East Government street, in the city of Pensacola, aforesaid, which said office was occupied by deponent, among other things, for the purpose of performing the duties devolving upon him as trustee as aforesaid, and in which said office this deponent kept and had the custody of the papers, books, etc., relating to and connected with the estate of said Scarritt Moreno, bankrupt, in deponent's hands as trustee, as aforesaid. That at the said time deponent was engaged in conversation with one Alex. Lischkoff, when one W. C. O'Neal, who was at the said time president of said American National Bank, of Pensacola, one of the defendants in the action or suit heretofore referred to, approached to where affiant was standing and conversing, as aforesaid, and stated to affiant that as soon as he, affiant, was at liberty, he, said O'Neal, desired to speak to him; thereupon affiant stated in effect that said O'Neal could speak to him then, and affiant entered his said office and stood alongside of a standing desk about 5 feet from the door of said office.

"Said O'Neal followed affiant into said office and stood opposite to affiant, and distant only a few feet. That thereupon said O'Neal, in effect, asked this affiant why he, affiant, had brought the name of his, the American National, bank, into the Moreno suit (meaning thereby the suit above referred to, brought by affiant as trustee

tee, against Scarritt Moreno and others); that affiant replied that he, O'Neal, could see his, affiant's attorneys in relation thereto; that said O'Neal made some remark to the effect that he would not do so, and stated to affiant that he, affiant, was no gentleman; that affiant thereupon said that he, affiant, was as much of a gentleman as he, the said O'Neal, was; that thereupon said O'Neal said, 'We'll settle the matter,' and turned about as if he intended to leave the premises of deponent, walking toward the door of said office and out upon the sidewalk.

"That affiant had no thought, idea, or suspicion that said O'Neal intended any personal violence toward him, and quietly started forward from where he was so standing as aforesaid, toward the door of said office leading into the street. That affiant barely reached the doorway of said office when said O'Neal, without any provocation, without any notice to deponent of his murderous intention, turned and wheeled suddenly about with his knife in his hand, and with intent to kill and murder deponent struck at his, deponent's, throat with said knife, and cut deponent at a point behind the left ear, cutting through lower portion of said left ear, then across the left cheek, ending at left corner of mouth, and immediately thereafter said O'Neal cut and stabbed deponent four further times: (1) On left side over ribs; (2) upon left hip; (3) on left elbow; and (4) on right hand. That the cuts, wounds, and stab so inflicted by said O'Neal upon deponent were of a serious and dangerous character, and from said time to the present deponent has been unable to attend to and perform his duties as trustee as aforesaid, and has been confined to his home, except for a few hours on two or three different days; and has ever since been, and is now, under the care and treatment of a physician, who is attending to said wounds.

"That said assault and attempt to murder was committed by said O'Neal as aforesaid, solely because and for the reason that affiant, as an officer of the United States district court in and for the northern district of Florida, had instituted the suit above set forth against the said American National Bank and others, and to interfere with and prevent deponent from executing and performing his duties as such officer of said court; and the said O'Neal did by the said murderous assault interfere with the management of said trust by deponent as an officer of the said court, and did for a long period of time, to wit, from the said 20th day of October, 1902, up to the present time, by reason of the injuries inflicted by him upon deponent as aforesaid, prevent and deter deponent from performing the duties incumbent upon him, deponent, as such officer, and did thereby interfere with the management by deponent, as such officer, of the estate of the said Scarritt Moreno, bankrupt.

"A. GREENHUT.

"Sworn to and subscribed before me this 7th day of November, A. D. 1902.

"E. K. NICHOLS,
"Referee in Bankruptcy."

And the said court, and respondent, as judge of said court, then and there, by virtue of the filing and presentation of said complaint, having jurisdiction in the premises, caused the said W. C. O'Neal to be cited to appear before the said court to answer to the charge of contempt as set forth and exhibited to the court in said information.

Respondent says that thereafter, and upon the 17th day of November, A. D. 1902, the said W. C. O'Neal appeared in the said court, the same being then and there in session, and thereafter and from time to time due proceedings were had in said court which resulted in a trial of the charges made and set forth in the said information; that the said W. C. O'Neal filed his answer in said cause; that he was heard on all questions arising in the case by counsel learned in the law, and on the 8th day of December, 1903, issue having been fully joined, the court proceeded to hear and try the said case upon the said charges of contempt so preferred against the said W. C. O'Neal; that evidence was offered and received in support of the facts as alleged in the said information, and evidence was also offered and received for and on behalf of the said W. C. O'Neal; and after the hearing of all testimony offered upon both sides, and after hearing arguments of counsel for the said W. C. O'Neal, respondent, as the presiding judge of said court, held and found the said W. C. O'Neal guilty of contempt as charged, and entered against him the following order and judgment, to wit:

"And afterwards, to wit, on the 9th day of December, A. D. 1902, the following proceedings were had in open court, to wit:

"In the matter of the rule upon W. C. O'Neal to show cause why he should not be punished for contempt of this court as to the matters and things set forth in the affidavit of Adolph Greenhut.

"This cause coming on to be heard at this time on the affidavit of Adolph Greenhut in the matter of the bankruptcy proceedings in the estate of Scarritt Moreno,

and upon the rule to show cause why he should not be punished for contempt of this court, issued thereon by this court, against W. C. O'Neal, and upon the answer of the said respondent, W. C. O'Neal, to the said rule and affidavit; and the court having heard the testimony and the witnesses for the prosecution and for the respondent, and after argument of counsel and consideration by the court, and the court being advised in the premises, the court doth find as follows:

"That the affidavit of Adolph Greenhut, upon which this rule was granted, is true, and that the respondent is guilty of the acts and things set forth therein, in the manner and form therein alleged, and that the same constitute and are a substantial contempt of this court, and it is therefore

"*Ordered, adjudged, and directed* that the said respondent, W. C. O'Neal, be taken hence to the county jail of Escambia County, at Pensacola, in the State of Florida, and there confined for and during the period of sixty days, and that he stand committed until the terms of this sentence be complied with, or until he be discharged by due process of law.

"And the said respondent, W. C. O'Neal, at this time having sued out his writ of error to the Supreme Court of the United States, and made and entered into a bond and undertaking, conditioned as required by law and duly approved by this court, it is therefore ordered that the said writ of error be and operate as supersedeas to the judgment heretofore rendered in this cause."

Respondent here alleges and says that all of the facts and allegations contained in the said information filed and presented in said court by the said A. Greenhut, and so found and adjudged to be true by this respondent, as the presiding judge of said court, upon the said trial, were and are true in all respects as set forth in the said information of said A. Greenhut; and respondent herein refers to the allegations contained in said information hereinbefore fully set forth and adopts each and every of said allegations as a part of his answer herein, and hereby alleges that each and every of the facts set forth in the said information were and are true; and he asks that the same be taken as a part of his answer herein as fully and to the same effect as if the same were herein specifically reiterated and charged.

Respondent further says that thereafter the said W. C. O'Neal sued out a writ of error to the Supreme Court of the United States, and thereafter perfected the same by filing in the said Supreme Court a transcript of the record of the said case and of the proceedings had therein in the said district court; and thereafter such proceedings were had and taken in the Supreme Court of the United States that on the 1st day of June, 1903, the said writ of error was dismissed by the said court for want of jurisdiction.

Respondent, further answering, says that thereafter, to wit, on the 12th day of June, 1903, the said W. C. O'Neal, having been apprehended and imprisoned in the county jail of Escambia County, at Pensacola, Fla., in pursuance of the judgment and sentence of the said United States court sitting in and for the northern district of Florida, sued out and prosecuted before the Hon. Don A. Pardee, United States circuit judge in and for the fifth judicial circuit, a writ of habeas corpus; and thereafter such proceedings were had thereunder before the said circuit judge; that on the 10th day of November, A. D. 1903, said judge entered judgment and made an order discharging said writ of habeas corpus, which said judgment and order, together with the reasons stated by the court therefor, is in words and figures as following, to wit:

"United States circuit court, fifth judicial circuit, northern district of Florida. *Ex parte* W. C. O'Neal. Habeas corpus.

"The petitioner, W. C. O'Neal, was convicted in the district court for the northern district of Florida on a charge of contempt of court in committing an assault upon an officer of said court, and thereupon was sentenced to imprisonment in the county jail at Pensacola, Fla., for a term of sixty days. This conviction was immediately followed by a writ of error to the Supreme Court of the United States based on a certified question as to jurisdiction. In dismissing the writ of error the Supreme Court said:

"Jurisdiction over the person and jurisdiction over the subject-matter of contempt were not challenged. The charge was the commission of an assault on an officer of the court for the purpose of preventing the discharge of his duties as such officer, and the contention was that on the facts no case of contempt was made out.

"In other words, the contention was addressed to the merits of the case and not to the jurisdiction of the court. An erroneous conclusion in that regard can only be reviewed on appeal of error, or in such appropriate way as may be provided. *Louisville Trust Company v. Cominger* (184 U. S., 18, 26); *Ex parte Gordon* (104 U. S., 515).

"And while proceedings in contempt may be said to be *sui generis*, the present judgment is in effect a judgment in a criminal case over which this court has no jurisdiction in error (section 5, act of March 3, 1891, 26 Stat., 826, c. 517, as amended by the act of January 20, 1897, 29 Stat., 492, c. 68); *Chetwood's case* (165 U. S., 445, 462); *Tinsley v. Anderson* (171 U. S., 101, 105); *Cary Manufacturing Company v. Acme Flexible Clasp Company* (187 U. S., 427, 428; 190 U. S., 37, 38)."

"The case is here presented upon the record proper as submitted to the Supreme Court and upon further showing of alleged facts, which petitioner claims do not contradict the record, to wit:

"That the place at which took place on the morning of October 20, 1902, the affray between A. Greenhut and petitioner, in which is alleged to have occurred the assault by petitioner upon the said A. Greenhut, for which the district court has sentenced petitioner as for a contempt, was the office in the store of the said A. Greenhut and was a part of the building occupied by him for the purpose of conducting the said grocery business, and was used in connection with his position as trustee only because it was his place of business and therefore more convenient for him. That the said building was at said time, and is now, No. 104 East Government street, in the city of Pensacola, and distant from the United States court room and the building in which it was and is held not less than 400 feet, and separated therefrom by an intervening street and intervening alley and by more than a block of brick business houses, and was not in any way connected with or used in connection with the said court or court-house or any of the functions or duties of the said court or of the judge thereof. That the said district court was not in session in the city of Pensacola on the said 20th day of October, nor had been for months before the said date, and that no session thereof occurred thereafter until November 7, 1902, and that the judge of said court was not on the date in said State nor had been therein for months prior thereto, nor did he come therein until the 6th day of November, A. D. 1902.

"As to claimed authority to supplement record as to facts, see *In re Cuddy* (131 U. S., 280).

"In my opinion the additional facts offered to supplement the record do not materially change the status of the case nor do they in any wise extend the jurisdiction of this court upon this writ.

"The charge of contempt against the relator is based upon the fact that he unlawfully assaulted and resisted an officer of the district court in the execution of orders of the court and in the performance of the duties of his office under such orders, and in that respect it would seem to be immaterial whether the place of resistance was 40 or 400 feet from the actual place where the court was usually held, so long as it was not in the actual presence of the court nor so near thereto as to embarrass the administration of justice.

"Under the bankruptcy act of 1898, section 2, the district courts of the United States, sitting in bankruptcy, are continuously open; and under section 33 and others of the same act a trustee in bankruptcy is an officer of the court. The questions before the district court in the contempt proceedings were whether or not an assault upon an officer of the court, to wit, a trustee in bankruptcy for and on account of and in resistance of the performance of the duties of such trustee, had been committed by the relator, and if so, was it under the facts proven a contempt of the court whose officer the trustee was.

"Unquestionably the district court had jurisdiction summarily to try and determine these questions, and having such jurisdiction, said court was fully authorized to hear and decide and adjudge upon the merits. (*In re Savin*, 131 U. S., 267, 276, 277.)

"This brings us squarely to the question whether upon this writ of habeas corpus the inquiry can be extended by this court so as to review, as upon writ of error, any irregularities of the district court in the proceedings or to determine, as upon appeal, the real merits of the case.

"I have examined with care the decisions of the Supreme Court of the United States in *In re Cuddy* (131 U. S., 280), *Ex parte Mayfield* (141 U. S., 116), and *In re Sachs & Watts* (190 U. S., 1), and in many other cases, and do not find that either or any of them control or determine the question in favor of such claimed jurisdiction.

"Whatever an appellate court may have power to do in regard to supplementing the record, as held in *In re Cuddy* and in *Ex parte Mayfield*, or upon certiorari and habeas corpus to examine the merits of the case, as in *In re Sachs & Watts*, I am forced to follow, as I did in *Ex parte Davis* (112 F. R., 139), the Supreme Court in *United States v. Pidgeon* (153 U. S., 48, 62), wherein it is declared: 'Under a writ of habeas corpus the inquiry is addressed, not to errors, but to the question whether the proceedings and the judgment rendered therein are for any reason nullities; and, unless it is affirmatively shown that the judgment or sentence under which the petitioner is confined is void, he is not entitled to his discharge.'

"This court has no appellate jurisdiction over the district court for this district, and if it should attempt to go beyond the rule declared in *United States v. Pridgeon*, and assume authority to look into the merits wherein judgments have been rendered in the district court in contempt cases, it would be, from my standpoint, an unwarranted assumption of jurisdiction, decidedly tending to scandal in judicial proceedings.

"In dealing with the proceedings against petitioner in the district court, the Supreme Court said that an erroneous conclusion in regard to the merits can only be reviewed on appeal or error, and in such appropriate way as may be provided. As shown above, the writ of habeas corpus is not an appropriate way provided.

"The Supreme Court further said that the judgment in this present case is in effect a judgment on a criminal case, in which that court had no jurisdiction on error. The court did not say that no other appellate court had jurisdiction on error.

"In *re Paquet* (114 F. R., 437) the circuit court of appeals in this circuit held that that court had no jurisdiction to issue a writ of prohibition in a certain contempt case when pending in the circuit court of the northern district of Florida, but intimated that possibly a writ of error might lie in such cases where final judgment of conviction had been rendered; but whether the petitioner here has or had a remedy by writ of error from or by appeal to any appellate court is immaterial on this inquiry, and I am satisfied that that this court has no jurisdiction to review the petitioner's case by any remedy provided by law.

"The writ of habeas corpus is discharged.

"Circuit Judges McCormick and Shelby sat with me and heard argument in this case, and they concur in this opinion.

"DON. A. PARDEE,
"Circuit Judge.

"NOVEMBER 10, 1903."

Whereby respondent insists and alleges that the said proceedings against the said W. C. O'Neal for the contempt as aforesaid came to an end, and a final adjudication was had therein.

Respondent alleges that the said United States district court, sitting in and for the northern district of Florida, had jurisdiction of the said contempt proceedings; that due process of law was issued therein, and that the said W. C. O'Neal appeared in said court and was accorded every right to be heard by counsel learned in the law, to plead, to present evidence, and to purge himself of said contempt if he could do so in accordance with the facts and the law of the case; and he says that the said W. C. O'Neal did not purge himself of said contempt.

And respondent insists that he was and is blameless in the premises; that he performed his duty, and his whole duty, in all the said proceedings; that he was entirely free from any bias, prejudice, or desire to injure said W. C. O'Neal; that all his acts and doings in and about the trial of said case, the rulings made therein, the decision thereof, and the imposing of sentence therein were prompted solely by his desire to maintain the dignity and authority of the said district court of the United States, and to punish such acts of contempt of its authority as tended to hinder, delay, obstruct, and impede the due administration of justice therein, and to subject the said court and the judge and officers thereof to public criticism, contumely, and contempt; and he alleges that the sentence imposed upon said W. C. O'Neal, in view of the gravity of the contempt committed, was reasonable, and that in fact this respondent exercised great leniency in fixing the punishment of the said W. C. O'Neal.

Respondent further alleges that in all the said proceedings he was in no way guilty of an abuse of judicial power or of a high misdemeanor, and that the said proceedings had and held before him and the judgment resulting therefrom were all in accordance with the law and the facts of the case, and any failure of this respondent as presiding judge of the United States district court to have adjudged the said W. C. O'Neal guilty of a contempt and to have punished him therefor, in view of the enormity of the offense, as shown by the testimony, would have greatly tended to destroy the dignity and authority of the said court, to intimidate the officers of said court in the performance of their duties as such, and to obstruct, hinder, and delay the due course of justice therein, and to bring said court and its officers into public disfavor and just contempt.

And this respondent, in submitting to this honorable court, this, his answer to the articles of impeachment exhibited against him, respectfully reserves leave to amend and add to the same from time to time, as may become necessary or proper and when said necessity and propriety shall appear.

CHAS. SWAYNE.

ANTHONY HIGGINS,
JOHN M. THURSTON,
Of Counsel for Respondent.

At the conclusion of the reading of the answer to the first article, Mr. THURSTON said: Mr. President, we have attached as exhibits to this answer to the first article three certificates, one from the fifth, one from the seventh, and one from the ninth judicial circuits of the United States, which show that, almost without exception, the amount of \$10 per diem was drawn by each and all of the judges, both of the circuit and district courts of those circuits, in their attendance outside of their districts, under the provisions of these laws. We have been unable up to the present time to secure from the Secretary of the Treasury the additional certificates for the other districts.

After concluding the reading of the entire answer of the respondent, Mr. THURSTON said: Now, Mr. President, referring to the fact that certain exhibits which we desired to attach to our answer to article No. 1 had not been attached because of the fact that the Secretary of the Treasury in the short space of time has been unable to furnish it to us, we move as follows:

Counsel for respondent move an order giving them leave to hereafter attach to the answer herein to article 1, as exhibits, additional copies of certificates of the Secretary of the Treasury, showing the amounts certified to and received from the United States by the judges of the first, second, third, fourth, sixth, and eighth judicial circuits, as their reasonable expenses for travel and attendance while holding court away from the places of their residences, and outside of their respective districts, in the year 1903, it having been impossible for the Secretary of the Treasury to prepare and furnish the same to respondent up to the present time.

Mr. Manager PALMER. Mr. President, I think there ought to be some length of time stated in this order. Of course, we do not admit that these matters are at all material, but we do not object to their being filed if it is done within some reasonable length of time.

Mr. HIGGINS. Mr. President, I will state that I had heard from the Secretary of the Treasury that these certificates were prepared. We hope to have them from the Secretary before the end of the week. They are substantially in the same form and terms, though, of course, with different facts—*mutatis mutandis*—as those certificates already filed with the answer.

Mr. Manager PALMER. Before counsel for the respondent asked for an order that they may have until next Monday to file these additional exhibits I was going to ask for an order that we have until next Monday to reply. Will that suit counsel?

Mr. HIGGINS. How is that? I did not understand the manager.

Mr. FAIRBANKS. Mr. President, I propose the order which I send to the desk upon the motion of the counsel for the respondent with reference to the exhibits.

Mr. BACON. I would suggest to the Senator from Indiana that under the order adopted this morning it is competent for the managers to directly ask the order without its being proposed by a Senator.

The PRESIDING OFFICER. The Chair understands that an order is moved by counsel for respondent and the order is in writing. Will the counsel present it to the Secretary?

Mr. THURSTON. Mr. President, the motion was in writing. We had inferred that the order would be proposed by some member of the court.

The PRESIDING OFFICER. The Secretary will read the motion. The Secretary read as follows:

Counsel for respondent move an order giving them leave to hereafter attach to the answer herein to article 1, as exhibits, additional copies of certificates of the Secretary of the Treasury showing the amounts certified to and received from the United

States by the judges of the first, second, third, fourth, sixth, and eighth judicial circuits as their reasonable expenses for travel and attendance while holding court away from the places of their residences, and outside of their respective districts, in the year 1903, it having been impossible for the Secretary of the Treasury to prepare and furnish the same to respondent up to the present time.

The PRESIDING OFFICER. The Chair understands that this being a motion for an order, the Senator from Indiana [Mr. Fairbanks] proposes the order; which will now be read by the Secretary.

The Secretary read as follows:

Ordered, That the respondent, Charles Swayne, have leave to hereafter, not later than the 10th instant, attach as further exhibits to his answer to article 1 of the articles of impeachment copies of the certificates of the Secretary of the Treasury, referred to in said answer, showing the amounts certified to and received from the United States by the judges of the first, second, third, fourth, sixth, and eighth judicial circuits as their reasonable expenses for travel and attendance while holding court away from the place of their residence, and outside of their respective districts, in the year 1903.

Mr. BAILEY. Mr. President, as a matter of good practice—and I presume we are to conduct this trial according to good practice—it seems to me that this is a request for time in which to exhibit evidence as a part of the pleadings. If this matter is admissible before this court at all, it is admissible as evidence. It does not occur to me as an appropriate proceeding to be giving time in which counsel for the respondent may file evidence with their pleadings. That is as I look at it. If it were desirable to give the counsel time to prepare new allegations I should not object to an order for that; but I do object to having this court put into the attitude of expressly and by order providing for delay in producing as a part of the pleadings what properly, as it seems to me, belongs only to the production of evidence.

The PRESIDING OFFICER. The Chair will state the question. Counsel for the respondent move for an order permitting certain facts to be obtained from the Secretary of the Treasury to be hereafter attached to their answer. That is the question before the Senate.

Mr. Manager PALMER. Mr. President, is it in order for the managers to oppose that motion?

The PRESIDING OFFICER. The managers undoubtedly have a right to be heard upon the motion made by the counsel for the respondent.

Mr. Manager PALMER. If, as suggested by the Senator from Texas [Mr. Bailey], it is true that these exhibits are to be considered as evidence, then certainly they ought to be attached before the managers are asked to reply. We had expected to ask until next Monday to reply or to demur or to except to this answer, and the answer ought to be complete before we are asked to reply to it. If this time is postponed until the 10th of February our answer will have been in, and if these matters are matters of evidence it might be quite a serious consideration. Therefore we object to the extension of the time until the 10th of February.

Mr. THURSTON. Mr. President, the respondent and his counsel are so anxious to interpose no obstruction to the speedy trial of this case that if, as suggested, our motion would be taken as a ground for asking delay we here and now withdraw it.

The PRESIDING OFFICER. The motion is withdrawn, and the Chair supposes the order proposed by the Senator from Indiana is also withdrawn.

Mr. Manager PALMER. Mr. President, I ask that the order I send to the desk may be made.

The PRESIDING OFFICER. The managers on the part of the House request the adoption of the order which will be read by the Secretary.

The Secretary read as follows:

Ordered, That the managers have time until Monday next, at 2 p. m., to consult the House of Representatives on the subject of filing exceptions, demurrer, or replication to the answer of the respondent, and that they be furnished with a copy of the said answer.

Mr. FORAKER. I did not understand from the reading of the request that it was proposed by the managers that on the date named they would file such other pleadings as they may propose to file. I think before we vote upon the order it should be understood.

The PRESIDING OFFICER. The Secretary will again read the proposed order.

The Secretary again read the proposed order.

Mr. FAIRBANKS. I offer the order which I send to the desk as a substitute for that which has just been read.

The PRESIDING OFFICER. The managers on the part of the House having requested an order in the form which was read by the Secretary, the Senator from Indiana offers an order relating to the same subject-matter, which will be read by the Secretary.

The Secretary read as follows:

Ordered, That the managers on the part of the House be allowed until the 6th day of February instant, at 1 o'clock in the afternoon, to present the replication, if any, of the House of Representatives to the answer of the respondent. That any subsequent pleadings, either on the part of the managers or of the respondent, shall be filed with the Secretary of the Senate, of which notice shall be given to the House of Representatives and the respondent, respectively, so that all pleadings shall be closed on or before the 9th day of February instant, and that the trial shall proceed on the 10th day of February instant, at 1 o'clock p. m.

Mr. Manager PALMER rose.

The PRESIDING OFFICER. Do the managers desire to be heard with reference to the proposed order?

Mr. Manager PALMER. Yes, sir. We will have to object to the order proposed as a substitute for the one submitted by the managers, because it will cut the managers off with the privilege of filing a replication only. We may desire to file a demurrer or an exception, or some kind of pleading other than a replication. Under this order we are to file by the 6th of February, as I understand, a replication, and that is to end the pleadings so far as the managers are concerned, except that they may file something afterwards with the Secretary. We should like to have the order amended so that it will cover any kind of pleadings that we may desire to file.

Mr. FAIRBANKS. I will amend the order by making it read "replication or other pleading," striking out the words "if any" and inserting "or other pleading."

The PRESIDING OFFICER. The Secretary will read the proposed order as modified by the Senator from Indiana.

The order as modified was read, as follows:

Ordered, That the managers on the part of the House be allowed until the 6th day of February instant, at 1 o'clock in the afternoon, to present the replication or other pleading of the House of Representatives to the answer of the respondent; that any subsequent pleadings, either on the part of the managers or of the respondent, shall

be filed with the Secretary of the Senate, of which notice shall be given to the House of Representatives and the respondent, respectively, so that all pleadings shall be closed on or before the 9th day of February instant, and that the trial shall proceed on the 10th day of February instant, at 1 o'clock p. m.

Mr. FAIRBANKS. If the word "the" precedes "replication," it should be stricken out and the word "a" inserted; so that it will read "a replication or any other pleading."

Mr. FORAKER. Yes; the article "a" should be inserted for "the;" so as to read "a replication."

The PRESIDING OFFICER. The order will be so modified. Is there objection to the order as modified?

Mr. PETTUS. I am not very familiar with the forms of this proceeding; but the latter part of that order, it seems to me, will embarrass the managers, as well as counsel for the respondent. Pleadings go by succession, one after the other; one has to be disposed of before it is proper to file another. Filing pleadings with the Secretary in no way disposes of them, and it seems to me the counsel and the managers will both be embarrassed by not having one pleading removed out of the way by a demurrer or by some other form of pleading before another is submitted. The filing of a pleading with the Secretary will be of no benefit in removing it out of the way.

The PRESIDING OFFICER. The Chair finds that in the Belknap impeachment trial the following resolution was passed by the Senate:

Ordered, That the respondent filed his rejoinder with the Secretary on or before the 24th day of April instant, who shall deliver a copy thereof to the Clerk of the House of Representatives, and that the House of Representatives filed their surrejoinder, if any, on or before the 25th day of April instant, a copy of which shall be delivered by the Secretary to the counsel for the respondent.

Ordered, That the trial proceed on the 27th day of April instant, at 12 o'clock and 30 minutes afternoon.

The proposed order is as follows:

Ordered, That the managers on the part of the House be allowed until the 6th day of February instant, at 1 o'clock in the afternoon, to present a replication, or other pleading, of the House of Representatives to the answer of the respondent. That any subsequent pleadings, either on the part of the managers or of the respondent, shall be filed with the Secretary of the Senate, of which notice shall be given to the House of Representatives and the respondent, respectively, so that all pleadings shall be closed on or before the 9th day of February instant, and that the trial shall proceed on the 10th day of February instant, at 1 o'clock p. m.

The Presiding Officer thinks the proposed order does not differ in any essential particular from the precedent established in the Belknap case.

Mr. Manager PALMER. I should be glad if the order could be changed so as to fix the hour at 2 o'clock on the 6th of February, instead of at 1 o'clock. The House meets at 12 o'clock, and it might be that some question would arise as to the form of the replication or demurrer or whatever we choose to file. It might lead to discussion, and we might not be prepared to come to the Senate by 1 o'clock.

The PRESIDING OFFICER. Will the Senator from Indiana modify his order?

Mr. FAIRBANKS. I will modify the order by inserting "2 o'clock" instead of "1 o'clock."

The PRESIDING OFFICER. The modification is made. The question is on agreeing to the order as modified.

The order as modified was agreed to.

Mr. Manager PALMER. Mr. President, I ask that the order I send to the desk be made.

The PRESIDING OFFICER. The managers on the part of the House request an order, which will be read.

The order was read, and agreed to, as follows:

Ordered, That the Secretary of the Senate communicate to the House of Representatives an attested copy of the answer of Charles Swayne, judge of the United States in and for the northern district of Florida, to the articles of impeachment, and also a copy of the foregoing order.

Mr. SPOONER. I ask for the adoption of the order I send to the desk.

The PRESIDING OFFICER. The Senator from Wisconsin asks for the adoption of an order which will be read.

The Secretary read as follows:

Ordered, That the answer of the respondent, Charles Swayne, to the articles of impeachment exhibited against him by the House of Representatives be printed for the use of the Senate sitting in the trial of said impeachment.

Mr. BACON. I suggest that possibly the order might be enlarged to advantage so as to include not only the answer, but such further pleadings as may hereafter be filed under the order just adopted.

Mr. SPOONER. I have no objection to that.

Mr. BACON. I suggest that the Senator enlarge his order to that effect.

The PRESIDING OFFICER. The Chair suggests that it might be a little difficult to modify the order so as to apply to all subsequent pleadings filed by the managers on the part of the House and the counsel, respectively.

Mr. SPOONER. We want this at once, and we can get the other later.

Mr. BACON. Very well, Mr. President.

Mr. Manager PALMER. Mr. President, allow me to suggest that the articles of impeachment as printed in the Record are incomplete. There are five of the articles which are not in the Record at all, and sometime I suppose they ought to be printed in the form of a public document to accompany the answer and other pleadings.

The PRESIDING OFFICER. The Presiding Officer will state that the order offered by the Senator from Wisconsin, unless objected to, is agreed to.

With regard to the articles of impeachment as they appear in the Congressional Record, only six of the articles—the first six, I believe—are printed in the Record. The failure to print in full the articles of impeachment was due to an accident, I think, and is scarcely the fault either of the official reporters or of the Printing Office. But, between the two, the copy for the remaining articles was not at hand. I understand that in the permanent Record the full articles have been or will be printed.

The managers on the part of the House suggest that the articles of impeachment be printed as a document.

Mr. Manager PALMER. With the answer.

The PRESIDING OFFICER. With the answer. If there is no objection, that order will be made.

Mr. FAIRBANKS. I move that the Senate sitting as a court of impeachment adjourn until Monday, the 6th instant, at 2 o'clock p. m.

The motion was agreed to; and (at 2 o'clock and 50 minutes p. m.) the Senate sitting as a court of impeachment adjourned until Monday, February 6, 1905, at 2 o'clock p. m.

The managers on the part of the House and the counsel for the respondent retired from the Chamber.

The President pro tempore resumed the chair.

IN THE SENATE, *February 6, 1905.*

The PRESIDENT pro tempore (at 2 o'clock p. m.). The hour of 2 o'clock, to which the Senate sitting as a court of impeachment adjourned, has arrived. The Senator from Connecticut will please take the chair.

Mr. PLATT, of Connecticut, assumed the chair.

The PRESIDING OFFICER (Mr. Platt, of Connecticut). The Senate is now in session for the trial of articles of impeachment presented by the House of Representatives against Charles Swayne. The Sergeant-at-Arms will make proclamation.

The Sergeant-at-Arms made the usual proclamation.

The PRESIDING OFFICER. If the managers on the part of the House are in attendance, the Sergeant-at-Arms will notify them.

At 2 o'clock and 2 minutes p. m. the managers on the part of the House of Representatives (with the exception of Mr. Olmsted) appeared, and they were conducted to the seats assigned them.

Mr. Higgins and Mr. Thurston, counsel for respondent, entered the Chamber and took the seats assigned them.

The PRESIDING OFFICER. The Journal of the Senate sitting in the impeachment trial will be read.

The Secretary read the Journal of the proceedings of the Senate sitting for the trial of the impeachment of Charles Swayne of Friday, February 3, 1905.

The Presiding Officer laid before the Senate the following resolution from the House of Representatives which was read:

Fifty-eighth Congress, third session. Congress of the United States. In the House of Representatives.

FEBRUARY 6, 1905.

Resolved, That a message be sent to the Senate by the Clerk of the House informing the Senate that the House of Representatives has adopted a replication to the answer of Charles Swayne, judge of the northern district of Florida, to the articles of impeachment exhibited against him and that the same will be presented to the Senate by the managers on the part of the House; and also that the managers have authority to file with the Secretary of the Senate, on the part of the House, any subsequent pleadings they shall deem necessary.

Attest:

A. McDOWELL, *Clerk.*

The PRESIDING OFFICER. Have the managers on the part of the House anything to present?

Mr. Manager PALMER. I offer the replication which was adopted by the House, as stated in the resolution which has just been read. It is as follows:

Replication by the House of Representatives of the United States of America to the answer of Charles Swayne, judge of the United States in and for the northern district of Florida, to the articles of impeachment exhibited against him by the House of Representatives.

The House of Representatives of the United States have considered the several answers of Charles Swayne, district judge of the United States in and for the northern district of Florida, to the several articles of impeachment against him by them exhibited in the name of themselves and of all the people of the United States, and reserv-

ing to themselves all advantage of exception to the insufficiency, irrelevancy, and impertinency of his answer to each and all of the several articles of impeachment exhibited against the said Charles Swayne, judge, as aforesaid, do deny each and every averment in said several answers or either of them, which denies or traverses the acts, intents, crimes, or misdemeanors charged against said Charles Swayne in said articles of impeachment or either of them and for replication to said answers do say that said Charles Swayne, district judge of the United States in and for the northern district of Florida, is guilty of the high crimes and misdemeanors mentioned in said articles, and that the House of Representatives are ready to prove the same.

J. G. CANNON,
Speaker of the House of Representatives.

A. McDOWELL,
Clerk of the House of Representatives.

The replication was handed to the Secretary.

The PRESIDING OFFICER. The replication will be printed. Have the managers anything further to offer?

Mr. Manager PALMER. Nothing to offer to-day, sir.

The PRESIDING OFFICER. Have counsel for the respondent anything to offer.

Mr. HIGGINS. Should we be advised there is anything further to offer we assume it can be done without a formal meeting of the Senate. It would be merely to join issue, in technical phrase.

The PRESIDING OFFICER. It may, under the order which has already been adopted, be filed with the Secretary.

Mr. BACON. Mr. President, I ask for the adoption of the following order relative to the adjournment of the Senate sitting as a court.

The PRESIDING OFFICER. The order will be read.

The order was read and agreed to as follows:

Ordered, That the Senate sitting in the trial of impeachment of Charles Swayne adjourn until Friday, the 10th instant, at 1 o'clock p. m.

The PRESIDING OFFICER (at 2 o'clock and 10 minutes p. m.). The Senate sitting in the trial of the impeachment of Charles Swayne stands adjourned until the 10th day of February at 1 o'clock p. m.

The managers on the part of the House and counsel for the respondent retired from the Chamber.

The President pro tempore resumed the chair.

IN THE SENATE, *February 10, 1906.*

The PRESIDENT pro tempore (at 1 o'clock p. m.). The hour to which the Senate, sitting as a court of impeachment, adjourned has arrived. The Senator from Connecticut will please take the chair.

Mr. PLATT, of Connecticut, assumed the chair.

The PRESIDING OFFICER (Mr. Platt, of Connecticut). The Senate is now in session for the trial of articles of impeachment presented by the House of Representatives against Charles Swayne, judge in and for the northern district of Florida. The Sergeant-at-Arms will make proclamation.

The Sergeant-at-Arms made the usual proclamation.

The PRESIDING OFFICER. The Chair understands that Senator Clark, of Wyoming, is present and has not yet been sworn. The Senator will please take his place in front of the desk to receive the oath.

Mr. CLARK, of Wyoming, advanced to the area in front of the Sec-

retary's desk and the oath was administered to him by the Presiding Officer.

Mr. BACON. Mr. President, I present the order which I send to the desk, and which I ask may be adopted by the Senate.

The PRESIDING OFFICER. The Secretary will read the order proposed by the Senator from Georgia [Mr. Bacon].

The Secretary read as follows:

Ordered, That the pleadings in the matter of the impeachment of Charles Swayne having been closed, the Secretary inform the House of Representatives that the Senate is ready to proceed with the trial of said impeachment according to the rule heretofore communicated to the House, and that provision has been made for the accommodation of the House of Representatives and its managers in the Senate Chamber.

The PRESIDING OFFICER. Is the Senate ready for the question on the adoption of the order submitted by the Senator from Georgia? If so, the question is on agreeing to the order.

The order was agreed to.

At 1 o'clock and 5 minutes p. m. the managers on the part of the House of Representatives were announced, and they were conducted by the Assistant Sergeant-at-Arms to the seats assigned them in the area in front of the Secretary's desk.

The respondent, Charles Swayne, accompanied by his counsel, Mr. Anthony Higgins and Mr. John M. Thurston, entered the Chamber and took the seats provided for them in the area in front of the Secretary's desk.

The PRESIDING OFFICER. The Journal of the proceedings of the last session of the Senate sitting for the trial of the impeachment of Charles Swayne will now be read.

The Journal of the proceedings of the Senate sitting as a court on Monday, February 6, 1905, was read.

The PRESIDING OFFICER. The Presiding Officer will inquire of the Sergeant-at-Arms whether the names of the witnesses have been furnished him by the managers on the part of the House and by the counsel for the respondent, and whether those witnesses have been summoned for attendance at this time?

The SERGEANT-AT-ARMS. Mr. President, the names of the witnesses for both the managers on the part of the House of Representatives and the respondent have been furnished me and have been served, and many of the witnesses are now in the city.

Mr. FAIRBANKS. Mr. President, I move the adoption of the order which I send to the desk.

The PRESIDING OFFICER. The Senator from Indiana proposes an order, which will be read.

The Secretary read as follows:

Ordered, That the proceedings of the Senate sitting in the trial of impeachment of Charles Swayne be printed daily for the use of the Senate as a separate document.

The PRESIDING OFFICER. If there be no objection, the order submitted by the Senator from Indiana will be regarded as agreed to. The Chair hears no objection, and the order is agreed to.

Mr. FAIRBANKS. Mr. President, I offer another order, which I send to the desk and ask for its adoption.

The PRESIDING OFFICER. The proposed order will be read by the Secretary.

The Secretary read as follows:

Ordered, That the daily sessions of the Senate sitting in the trial of impeachment of Charles Swayne shall, unless otherwise ordered, commence at 2 o'clock in the afternoon and continue until 5 o'clock in the afternoon.

The PRESIDING OFFICER. If there be no objection, the order submitted by the Senator from Indiana will be regarded as agreed to. The Chair hears no objection, and it is agreed to.

Have the managers on the part of the House of Representatives anything to present?

Mr. Manager PALMER. Mr. President, I suggest that it would be well to call the names of witnesses to see who are present, so that we may have an opportunity to move for attachments if any have not responded to the subpoenas.

The PRESIDING OFFICER. The Sergeant-at-Arms will bring the list which has been given him of witnesses to be summoned.

The list of witnesses was handed by the Sergeant-at-Arms to the Presiding Officer.

The PRESIDING OFFICER. The Secretary will call the names of the witnesses who have been summoned; and, if present, each witness will please respond by saying "here."

The Secretary read the following names:

T. N. Adams, of Pensacola, Fla.; C. M. Coston, of Pensacola, Fla.; E. T. Davis, of Pensacola, Fla.; J. J. Hooten, of Pensacola, Fla.—

Mr. Manager PALMER. Wait a minute. Mr. President, I know that some of these witnesses are here, but they are outside of the Senate Chamber. I presume they are in the lobby, waiting. I suppose they ought to be in the Chamber for a moment, at any rate, that they may answer to their names.

The PRESIDING OFFICER. The Secretary will suspend the reading of the list of witnesses. The Sergeant-at-Arms has furnished to the Presiding Officer a list of the witnesses who have reported to him, and the Secretary will read the list of witnesses who have so reported.

The Secretary read as follows:

C. M. Coston, E. T. Davis, W. H. Northrup, A. C. Blount, A. H. D'Alembert, C. H. Laney, W. N. Potter, Geo. P. Wentworth, J. Emmett Wolfe, E. A. Dearborne, P. W. Chase, W. P. Hardwick, Harry E. Graham, Minnie E. Kehoe, W. O. Bradley, F. W. Marsh, L. B. McCulloch.

The PRESIDING OFFICER. The Sergeant-at-Arms also informs the Presiding Officer that he has unofficial information that a large number of other witnesses have come to the city, but have not as yet reported to him. As to the witnesses who have already reported to him, he is not aware of their present whereabouts.

Mr. Manager PALMER. Well, Mr. President, I think the managers will not move for attachment of witnesses who have not responded to-day; but perhaps we shall do so to-morrow, so as to give the witnesses an opportunity to get in, except in the case of—

The PRESIDING OFFICER. If Mr. Manager Palmer will permit, the Sergeant-at-Arms will try to notify all the witnesses who are here in the city that they must be present at the time of the trial.

Mr. HIGGINS. I would ask if the list of witnesses who have reported which has been read includes the names of witnesses for the respondent?

The SERGEANT-AT-ARMS. Yes.

The PRESIDING OFFICER. Unless it is called for, the reading of the full list of witnesses summoned will not be ordered. If the managers on the part of the House or counsel for the respondent desire the list read, it will be read.

Mr. Manager PALMER. Mr. President, we do not desire it.

Mr. HIGGINS. No.

Mr. Manager PALMER. Mr. President, in the case of Joseph H. Durkee, of Jacksonville, Fla., we have a certificate of a physician stating that he is not able to attend. The certificate was sent to the Presiding Officer and by him handed to me, and it has been exhibited to counsel on the other side.

Mr. Durkee is a witness who has been subpoenaed by both sides, and is a material and important witness. I have a witness present who will testify with respect to Mr. Durkee's present condition, and I ask that Mr. B. S. Liddon be summoned to testify what Mr. Durkee's present condition is, for the purpose of moving for an attachment.

The PRESIDING OFFICER. Is it necessary for a formal summons to be issued, or is the witness whom the manager desires to examine present?

Mr. Manager PALMER. He is present. He has been summoned, and is one of the witnesses. I presume he is about the building somewhere. I suppose he is out in the lobby.

The PRESIDING OFFICER. Is there any objection on the part of counsel for the respondent to the request of the managers?

Mr. HIGGINS. There is none whatever.

The PRESIDING OFFICER. The Sergeant-at-Arms will endeavor to find the witness.

The Sergeant-at-Arms proceeded to execute the order of the Presiding Officer.

The PRESIDING OFFICER. The Presiding Officer desires to suggest to the managers on the part of the House and counsel for the respondent whether the evidence in regard to the condition of the witness who has been summoned by both sides can not be agreed upon between them without the necessity of taking testimony as to it?

Mr. Manager PALMER. Mr. President, we expect to prove that within the last week Mr. Liddon has had an interview with Mr. Durkee in Jacksonville, Fla., at his business place, in his bank; that he was out on the street, and apparently well enough to come to Washington.

Mr. B. S. Liddon entered the Chamber.

Mr. HIGGINS. Mr. Liddon is here now.

Mr. Manager PALMER. Mr. Liddon is present, and if it is desired he can be sworn.

Mr. HIGGINS. Yes.

BENJAMIN S. LIDDON, sworn and examined.

By Mr. Manager PALMER:

Q. Are you acquainted with Joseph H. Durkee, of Jacksonville, Fla.?—A. Yes, sir.

Q. When did you see him last?—A. I saw him Wednesday last, one week ago.

Q. Where did you see him?—A. In Jacksonville, Fla.

Q. Just state under what conditions.—A. Mr. Durkee has an office, a nominal office. I called at his office to see him. I was informed that he was at his house. I went to his house, and Mrs. Durkee—

Mr. SCOTT. We shall have to ask the witness to speak louder, as we can not hear.

The WITNESS. I will repeat it. Thank you.

I went to his house. I was informed by his wife that he was at the National Bank of Jacksonville, of which institution he is vice-president and a director. I saw him there and talked with him.

Q. (By Mr. Manager PALMER.) How long did your interview last?—
A. I talked with him at the bank, I suppose, for twenty minutes or more. Then he accompanied me to the United States clerk's office—the clerk of the United States district and circuit court—and there we examined together quite a lot of records. I think we were there, all told, two hours and a half, maybe more.

Mr. Manager PALMER. Cross-examine.

Mr. HIGGINS. We have no questions.

Mr. Manager PALMER. Mr. President, on that showing we shall ask for an attachment for the witness, Mr. Durkee. There is no reason why he should not be here.

The WITNESS. Are you through with me?

Mr. Manager PALMER. For the present.

The WITNESS. I can retire?

Mr. Manager PALMER. Yes.

The PRESIDING OFFICER. Have counsel for the respondent anything to say with regard to the request of the managers on the part of the House?

Mr. HIGGINS. Mr. President, I wish to state that in asking for a subpoena for Major Durkee, on behalf of the respondent, I included a subpoena for Doctor Durkee, not knowing his first name, being informed merely that he was the Major's son and a physician. Major Durkee can not move away from home without having an attending physician. He is suffering with a serious complaint. Therefore it would be necessary in any process that was issued for him to have his son included, as I am informed. That is all I care to say.

Mr. Manager PALMER. There is no objection to that, but we are willing to take Mr. Durkee's deposition. We understand perfectly that that can not be forced, but if counsel on the other side will agree to take Major Durkee's deposition at Jacksonville, Fla., the managers will consent.

Mr. HIGGINS. Mr. President, we can not do that. We have never had an opportunity to examine this witness. We know nothing of the subject-matter about which he will testify, except in a general way, and we are not in a position to attempt, on this short notice and with the trial immediately on us, to take his deposition.

The PRESIDING OFFICER. The Senate will take into consideration the motion for an attachment, and decide it later on. The Presiding Officer will merely say at the present time that it seems to be understood that the witness is suffering from a serious disease, which makes it very difficult for him to travel, certainly without an attendant, and that for that reason his son, who is a physician, has been summoned. It would seem as if it were hardly required to issue an attachment until information is communicated to the Senate as to whether there is a real refusal on the part of the witness to come or whether the witness will come with his son as an attendant.

For that reason the Presiding Officer suggests that a decision of the motion be postponed, and the Sergeant-at-Arms will be instructed to ascertain whether the witness will come under the circumstances.

Mr. Manager PALMER. Mr. President, this proceeding had its inception in a series of resolutions passed by the legislature of the State of Florida, which were transmitted to the House of Representatives, and upon which the proceeding was based.

I ask to have read as a part of my remarks in opening this case the resolutions of the legislature of Florida.

The PRESIDING OFFICER. They will be read by the Secretary, if there is no objection.

The Secretary read as follows:

Senate joint resolution in reference to Charles Swayne, judge of the United States court for the northern district of Florida.

Be it resolved by the legislature of the State of Florida, Whereas Charles Swayne, United States district judge of the northern district of Florida, has so conducted himself and his court as to cause the people of the State to doubt his integrity and to believe that his official actions as judge are susceptible to corrupt influences and have been so corruptly influenced;

Whereas it also appears that the said Charles Swayne is guilty of a violation of section 551 of the Revised Statutes of the United States in that he does not reside in the district for which he was appointed and of which he is judge, but resides out of the State of Florida and in the State of Delaware or State of Pennsylvania, in open and defiant violation of said statute, and has not resided in the northern district of Florida, for which he was appointed, in ten years, and is constantly absent from said district, only making temporary visits for a pretense of discharging his official duties;

Whereas the reputation of Charles Swayne as a corrupt judge is very injurious to the interests of the entire State of Florida, and his constant absence from his supposed district causes great sacrifice of their rights and annoyance and expense to litigants in his court;

Whereas it also appears that the said Charles Swayne is not only a corrupt judge, but that he is ignorant and incompetent, and that his judicial opinions do not command the respect or confidence of the people;

Whereas the administration of the United States bankruptcy act in the court of said Charles Swayne and by his appointed referee has resulted in every instance in the waste of the assets of the alleged bankrupt by being absorbed in unnecessary costs, expenses, and allowances, to the great wrong and injury of creditors and others, until such administration is in effect legalized robbery and a stench in the nostrils of all good people;

Be it resolved by the house of representatives of the State of Florida (the senate concurring), That our Senators and Representatives in the United States Congress be, and they are hereby, requested to cause to be instituted in the Congress of the United States proper proceedings for the investigation of the proceedings of the United States circuit and district courts for the northern district of Florida by Charles Swayne as United States judge for the northern district of Florida, and of his acts and doings as such judge, to the end that he may be impeached and removed from such office.

Resolved further, That the secretary of the State of Florida be, and is hereby, instructed to certify to each Senator and Representative in the Congress of the United States, under the great seal of the State of Florida, a copy of this resolution and its unanimous adoption by the legislature of the State of Florida.

[The State of Florida, office of the secretary of state.]

UNITED STATES OF AMERICA, *State of Florida*, ss:

I, H. Clay Crawford, secretary of state of the State of Florida, do hereby certify that the foregoing is a true and exact copy of senate joint resolution in reference to Charles Swayne, judge of the United States court for the northern district of Florida, passed by the legislature of Florida, session of 1903, and on file in this office.

Given under my hand and the great seal of the State of Florida, at Tallahassee, the capital, this the 7th day of September, A. D. 1903.

[SEAL.]

H. CLAY CRAWFORD,
Secretary of State.

Mr. Manager PALMER. In pursuance of the request contained in the resolutions of that sovereign State, the House of Representatives, upon the motion of a member from Florida, referred the matter to the Committee on the Judiciary, and the articles which have been pre-

sented at the bar of the Senate impeaching Charles Swayne are the result of the investigation.

Mr. President, the duty has fallen upon me to open the case and state the facts upon which the House of Representatives, acting as a grand inquest inquiring in the name of all the people of the United States, have impeached Charles Swayne, judge of the district court of the United States in and for the northern district of Florida, of high crimes and misdemeanors, and upon which they propose to make their articles of impeachment good.

I shall not abuse the patience of the court by comment upon the magnitude of the questions involved, or of the consequence of a failure to do justice either to the people or the respondent. The respondent has for his triers picked men—learned lawyers and wise statesmen—who will, in the words of their solemn oath, “do impartial justice according to the Constitution and the law,” and the people of the great Republic have confidence that if guilty nothing beneath the shining stars can let the respondent go unwhipped of justice, or, if innocent, can prevent his safe deliverance.

The articles are twelve in number. They embrace five distinct charges.

The articles numbered from 1 to 3 cover the charge that Charles Swayne violated an act of Congress and committed a high misdemeanor in office by making false certificates that he had expended certain sums of money for necessary expenses of travel and attendance at Waco, Tex., in the year 1897, and at Tyler, Tex., in the years 1900 and 1903, while holding court outside of his district.

I will ask the Secretary to read the act of Congress which it is claimed he violated.

The PRESIDING OFFICER. The Secretary will read as requested.

The Secretary read as follows:

SEC. 5438. Every person who makes or causes to be made, or presents or causes to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States, any claim upon or against the Government of the United States, or any department or officer thereof, knowing such claim to be false, fictitious, or fraudulent, or who, for the purpose of obtaining or aiding to obtain the payment or approval of such claim, makes, uses, or causes to be made or used, any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry, or who enters into any agreement, combination, or conspiracy to defraud the Government of the United States, or any department or officer thereof, by obtaining or aiding to obtain the payment or allowance of any false or fraudulent claim, or who, having charge, possession, custody, or control of any money or other public property used or to be used in the military or naval service, who, with intent to defraud the United States or willfully to conceal such money or other property, delivers or causes to be delivered, to any other person having authority to receive the same, any amount of such money or other property less than that for which he received a certificate or took a receipt, and every person authorized to make or deliver any certificate, voucher, receipt, or other paper certifying the receipt of arms, ammunition, provisions, clothing, or other property so used or to be used, who makes or delivers the same to any other person without a full knowledge of the truth of the facts stated therein, and with intent to defraud the United States, and every person who knowingly purchases or receives in pledge for any obligation or indebtedness from any soldier, officer, sailor, or other person called into or employed in the military or naval service any arms, equipments, ammunition, clothes, military stores or other public property, such soldier, sailor, officer, or other person not having the lawful right to pledge or sell the same, every person so offending in any of the matters set forth in this section shall be imprisoned at hard labor for not less than one nor more than five years, or fined not less than \$1,000 nor more than \$5,000.

Mr. Manager PALMER. The laws relating to the subject of expenses of judges holding court outside of their districts are as follows:

The act of Congress of 1871, Revised Statutes, section 596, provides, when a district judge is assigned to hold court outside his district, as follows:

And it shall be the duty of the district judge so designated and appointed to hold the district or circuit court aforesaid without any other compensation than his regular salary as established by law.

The act of 1881, page 454, provides as follows:

And so much of section 596, Revised Statutes, as forbids the payment of expenses of district judges while holding court outside of their districts is hereby repealed.

And the act of 1896, page 451, as follows:

For reasonable expenses for travel and attendance of district judges directed to hold court outside of their districts not to exceed \$10 per day each, to be paid on written certificates of the judges, and such payment shall be allowed the marshal in settlement of his account with the United States.

There is no room for doubt that a judge holding court outside of his district is entitled to receive under these acts of Congress no more than the money actually expended for travel, and while in attendance upon the court, and that the amount shall not exceed \$10 per diem. With the wisdom or unwisdom of the law we have nothing to do.

The managers expect to prove that Judge Swayne made and signed a certificate that his necessary expenses of travel and attendance while holding court at Tyler, Tex., in 1897 were \$230 during a period of twenty-three days while holding court and going to and returning from the same, when in truth the amount of his necessary expenses was far less. His expenses of travel from the place he claims as his residence, viz, Pensacola, could not have exceeded \$60, and his board actually cost him at the rate of \$40 per month, or \$30.59 for twenty-three days, in all \$90.59, which is a little over one-third the amount that he certified he had expended and that he received from the United States.

At Tyler, Tex., in the year 1900, he certified that his reasonable expenses for travel and attendance thirty-one days were \$310, when his travel did not exceed \$60 and his board was obtained for \$38.75; in all, \$98.75, which is less than one-third the amount certified to and received by him.

Again at Tyler, Tex., in 1903, Judge Swayne certified that his reasonable expenses for travel and attendance were \$410 for forty-one days, when his travel did not exceed \$60 and his board was obtained for \$1.25 a day, or \$52.25; in all, \$112.25, which is about one-fourth the amount he received from the United States.

The gravamen of these charges is that Judge Swayne made and signed false statements for the purpose of receiving money from the United States. If he did, he violated the act of Congress which declares such conduct is a misdemeanor punishable by fine and imprisonment.

These facts are not denied. The answer to the charge, as submitted by the respondent, is—

First. That he construed the law to mean that he was entitled to \$10 for every day that he held court outside of his district, no matter what his expenses were, and that he believed he was entitled to it.

Secondly. That other judges, especially judges of the circuit court of appeals, construed a similar law, passed in 1891, to mean that they were to have \$10 a day.

Thirdly. That some of the district judges also construed the law of 1896 to mean that they were entitled to \$10 a day.

Fourthly. That assuming these interpretations were wrong, then he answers that he did not take the money with a criminal intent, and therefore committed no offense.

The respondent's first defense, that he believed the law gave him \$10 a day for expenses while holding court outside his district, is entitled to no respect.

The law provides that a judge shall be paid for reasonable expenses for travel and attendance while holding court outside of his district, not to exceed \$10 per day each, to be paid on written certificates of the judge.

This act limits the amount to be paid, first, to reasonable expenses, and, second, that such reasonable expenses shall not exceed \$10 a day.

The expenses of a judge must be what he expended, the act of 1871, which forbids any compensation for holding court outside the district, making it perfectly clear that he is entitled to nothing but expenses.

If a judge expended \$3 a day and takes \$10, what does the seven additional dollars represent? He can not take it as compensation; it can not be expenses, because no such expenses were incurred.

It is an absurdity to say that any reasoning person could honestly distort this law, which is so unambiguous that a "wayfaring man, though a fool, could not err therein."

The second and third defense is that other judges construed the law in the same way.

To make this excuse available the respondent must show that other judges took \$10 a day for their expenses while having spent less.

Statements from the Treasury Department showing that judges holding terms of the circuit courts of appeal in the larger cities, like Chicago, San Francisco, and New Orleans, certified their expenses to be \$10 per diem, but this, in the absence of proof that they actually expended less, amounts to nothing.

The fourth defense, that admitting that the law gives only the expenses incurred, then respondent claims that he had no criminal intent in taking the money.

If he had no criminal intent, why did he conceal a material fact when he made his certificates? Why did he not certify that he had held court in Waco twenty-three days, and was therefore entitled to receive \$230 for his expenses, being \$10 per day? Why did he deceive the Treasury officials by certifying that his reasonable expenses for travel and attendance amounted to the sum of \$230? They did not amount to \$230; they did amount to less than \$100. Why did he certify falsely? His certificate was conclusive to the accounting officers; they could not question it. If he had certified to the facts as they were, the marshal would not have paid him, and the Treasury would not have passed his account. He could have had but one motive in making the false certificate—that was to get the money, and he did get it.

This is not a case where the doctrine that for an innocent mistake of law a judge can not be held responsible. That doctrine applies when a judge decides a case properly before him between other parties.

When a judge is called upon to answer for an infraction of a criminal law he has no immunity that a common man does not possess. He can not be allowed to say, "I did it, but I did not think I was doing wrong." Large classes or criminals set up that same excuse. The trusted clerk

invests the funds of a bank in speculation and always says he never intended to embezzle; he always meant to pay back; but the cruel law pays no heed to that excuse. If a culprit should proffer such a defense in Judge Swayne's court he would meet with speedy disaster.

Larceny is defined to be when one takes and carries away the goods of another with intent to appropriate them to his own use.

It would be no answer for a culprit to say, "I took the goods, I used them up, but I intended to replace them next week."

The respondent must be judged in this case the same as every other man is judged. When charged with a crime he possesses no immunity; he can plead no privilege; he can not be justified by saying, "I did not think I was doing wrong."

The defense, if made by a common criminal, would be adjudged ridiculous; when made by a judge, supposed to be learned in the law, it is contemptible.

PRIVATE CAR.

In support of the article that charges Judge Swayne with using the property of the Jacksonville, Tampa and Key West Railroad Company without making compensation to the company, I first briefly state the facts, which will be proved and not disputed.

That at a time when the Jacksonville, Tampa and Key West Railroad was in the hands of Mr. Durkee, a receiver appointed by Hon. Charles Swayne, judge of the district court of the United States in and for the northern district of Florida, or appointed by Judge Pardee, as his answer states, and concurred in by Judge Swayne, the receiver provisioned a private car which belonged to the railroad company, placed a conductor and cook upon it, and sent it to Guyencourt, Del., for the purpose of bringing Judge Swayne to Jacksonville, Fla. Judge Swayne, his wife, his wife's sister, and her husband were transported on the private car to Jacksonville, Fla., and subsisted at the expense of the railroad company.

The respondent acknowledged the facts, as above stated, but defended his action upon the ground that the property of the railroad company being in the hands of the court, he, the judge of the court, had a right to use it without making compensation to the railroad company.

When questioned on the subject, we shall prove that he said, in answer to this question:

Q. You said this car was one of the cars in possession of the court, because the road was in the hands of a receiver?—A. Yes.

Q. You said that it was the privilege of the court to use that car, because the road was in the hands of a receiver?—A. Yes.

Mr. THURSTON. Mr. President, the statement that is now being read, as the record shows, is a part of the testimony of Judge Swayne taken before the committee of the House of Representatives, which, under the acts of Congress, can not be used against him in any criminal prosecution; and therefore it is improper to make the statement that the chairman of the managers is now proceeding to make. We object to the presentation here, by statement or otherwise, of any testimony that was given by Judge Swayne, the respondent, before the House committee, claiming his right, under the law of the Congress of the United States, that it can not be used against him in any criminal prosecution, of which this certainly is one.

Mr. Manager PALMER. Mr. President, if when this testimony which I offer as an admission of Judge Swayne is presented it is objected to, it will then be in order, I suppose, for the court to pass upon its admissibility. For the present I state that we purpose, if permitted, to prove these facts.

Mr. THURSTON. We insist that the act of Congress is so broad that in no way, by statement or otherwise before this court sitting to try Judge Swayne, can his testimony taken before the House committee be used. It is begging the question to insist upon the right to read to this court his statements taken there in the expectation that they will be excluded when they are offered as evidence.

Mr. Manager PALMER. I may say it is a very extraordinary proposition that Judge Swayne, or his counsel, should object to reading here admissions that he made under oath during the investigation in this case. But the question will arise when the testimony is offered as to its admissibility. I am now stating what we purpose to prove. If we are not allowed to prove it, of course it will go for nothing. If we are allowed to prove it, then I have a right to state it. I think I have a right to state what our purpose is at any rate and let the question of the admissibility of testimony abide the event of being offered and the objection that will be made to it.

The PRESIDING OFFICER. Will the manager go back in his opening statement a few sentences preceding the reference to the testimony which was given by Judge Swayne on some occasion, so that the Presiding Officer may know just how the matter arises?

Mr. Manager PALMER. I said that Judge Swayne acknowledged the facts as above stated, but defended his action upon the ground that the property of the railroad company being in the hands of the court the judge of the court had a right to use it without making compensation to the railroad company; and then I proceeded to give the statement that he made on that subject, as we propose to prove, if we are permitted.

The PRESIDING OFFICER. Of course, the managers on the part of the House and the counsel on the part of the respondent have somewhat wide latitude in their opening statements, but the Presiding Officer is of opinion that testimony which has been given by Judge Swayne on the occasion referred to ought not to be cited at length. He has a right to plead his privilege. He can not be obliged to criminate himself.

Mr. Manager PALMER. If you will allow me, there is a difference between a witness who is summoned to appear before a committee of Congress and to give testimony and a witness who voluntarily appears and makes a statement in his own defense. All these questions, of course, will be properly discussed when the time comes, whenever this testimony comes to be admitted; but if there is any question about it I will pass that proposition and go on to something else.

The PRESIDING OFFICER. It seems to the Presiding Officer to be an indirect way of getting before the Senate the fact that Judge Swayne had testified to this. The Presiding Officer suggests to the manager that he may properly omit the reading of testimony which has been given on another occasion by Judge Swayne.

Mr. Manager PALMER. I hope, Mr. President, that there will be no conclusive ruling made upon that subject, because the facts and circumstances under which this voluntary statement was made will perhaps have something to do with the case, and something to do with the

construction of the act of Congress, when this testimony comes to be admitted. As I understand the act of Congress, when a witness is summoned to come before a committee of Congress and give testimony, perhaps under some circumstances his testimony can not be used against him in some other case, though I believe the act of Congress applies only to a proceeding before the Interstate Commerce Commission. But be that as it may, I hope neither the presiding officer nor the court will foreclose this question so as to preclude argument on it when the time comes when this testimony comes to be offered. I accept the suggestion of the court, and pass on to something else.

We further expect to prove that Judge Charles Swayne made use of the same car for the purpose of taking a trip to the Pacific coast with his family and friends. The proof was that the car had some liquid supplies on board when taken. Judge Swayne expressed the opinion that he left as much when it was returned.

In the case of the trip from Delaware, and also the trip to California, transportation was secured by the receiver over other railroads, and in return therefor the private cars from the other roads were transported over the Jacksonville, Tampa and Key West without charge. A porter or cook employed by the railroad company went with the car to the Pacific coast at the cost of the company.

The trip to Guyencourt and return, if paid for at the rate charged private parties, would have cost about \$500. If Judge Swayne had the right to deplete the assets of this corporation to the amount of \$500, then he had the right to take less or more. If more, how much more? Could he take for his own use and that of his friends \$50,000 or \$500,000? If he had the right, was it limited only by his desires or necessities? The suggestion that he had such a right is not, of course, to be entertained for a moment. His duty plainly was to preserve the property and earnings of the bankrupt for the creditors. Every dollar that he subtracted from the company's assets was a dollar wrongfully taken from the creditors. That was a grave misbehavior in office no one denied.

It may be said that the car, with provisions and servants, was furnished the judge for the use of himself and friends by the receiver as a matter of courtesy. Judges have no right to accept favors from persons having business before their courts, whether receivers of railroad corporations or anyone else. All the sophistries in the world can not cover up the truth that anyone who gives gifts to a judge expects something in return. All the arguments fail to prove that a judge who takes gifts from suitors is not influenced thereby, insensibly perhaps. Judge Swayne had no right, legal or moral, to do what he did.

The excuse set up is that it was a trifling matter, not to be commended, but not of sufficient consequence to warrant his impeachment; that no injury was inflicted; that it does not appear that a corrupt purpose was intended, or that Judge Swayne was influenced thereby to do any wrong, and it does not show any moral turpitude. Lame, impotent, and insulting to common sense and common experience as these excuses are, they are better from a moral standpoint than the defense which is made for him. Judge Swayne was certainly guilty of a gross misbehavior in office in using and consuming the property of the railroad company for his pleasure and that of his friends. It was a misbehavior that showed moral turpitude. It was the kind of misbehavior in office that would be indictable at common law. It cer-

tainly is of the kind that can not be sanctioned or approved by any honest man, and it is clearly impeachable, and for it he should be convicted.

The receiver was an officer of Judge Swayne's court, having possession of the property of the railroad company as an officer of the court. It was not his to give away to the judge or anyone else.

The excuse set up by Judge Swayne that he was not corrupted can not be entertained.

And thou shalt take no gift: for the gift blindeth the wise, and perverteth the words of the righteous.

This is one of the laws in that wonderful code that God imparted to Moses when he talked to him face to face on Sinai. It was good fifteen hundred years before the Saviour was born, and it is good to-day—"the gift blindeth the wise, and perverteth the words of the righteous."

And to that may be added the saying of the wise man:

A man's gift maketh room for him.

To make this transaction a misbehavior it is in no wise needful to show that the official action of Judge Swayne was influenced by the gift. Francis Bacon, who has come down through the pages of history as the wisest of men, was impeached for taking a gift from a suitor in his court. He excused himself on the ground that other judges took gifts, and that the gift did not influence his judgment, because he decided the case against the giver. Neither excuse prevailed. He was convicted, driven from the woolsack, stripped of his office and honor, and sent into disgraceful retirement.

The sixth and seventh articles charge that Judge Swayne persistently and knowingly violated a statute of the United States which provides that—

Every judge shall reside in the district for which he is appointed, and for offending against this provision shall be deemed guilty of a high misdemeanor. (Rev. Stat., sec. 551.)

The facts, as they will appear in the testimony, are that after his confirmation as judge in 1890 he established his residence at St. Augustine, in a house rented from Mr. Flagler, and lived there with his family until the boundaries of his district were changed by the act of Congress in the year 1894. Judge Swayne states that he was urged by his friends not to move his family or furniture, that the next Congress would probably restore his district, and therefore his furniture was allowed to remain in St. Augustine until the year 1900, when he rented the Simmons cottage in Pensacola and lived there at intervals until 1903, when his wife bought a home. During the six years—

Mr. HIGGINS. Mr. President, I wish to say that that statement is again contrary to the rule we have invoked as to the statute, but I would not interrupt the learned manager if it were not a most shamefully garbled statement of what Judge Swayne did say.

The PRESIDING OFFICER. The Presiding Officer thinks that the manager has a right to state what he expects to prove, but that he ought not to go further by citing any testimony which has been given by Judge Swayne on another occasion as the means by which he expects to prove it.

Mr. Manager PALMER. I have not cited any other testimony. I am stating what I expect to prove. If it is not pleasant to the counsel on

the other side, I can not help it, but we expect to prove these facts by competent testimony.

During the six years that elapsed from 1894 to 1900, Judge Swayne was present in his district—that is, the northern district of Florida—during the terms of his court, in all, an average of about sixty-one days in each year. He lived at different hotels and boarding houses. When he left Pensacola he left word that if he was needed he could be found by addressing him at Guyencourt, Del.

He held court outside of his district about ninety-three days in each year on an average, and the remainder of the time, about two hundred and twelve days in each year, he spent either at Guyencourt, Del., or at some other place outside of the northern district of Florida.

It will not be disputed that Judge Swayne did not move his family or furniture into the northern district of Florida from the year 1894 to the year 1900, or that he himself did not tarry in the district beyond the days necessarily consumed in holding court, averaging about sixty-one days in each year, or that during his stay he lodged and lived at the Escambia Hotel or at Captain Northup's boarding house, in Pensacola, or at some hotel in Tallahassee.

The differences of opinion will be upon the question whether, under the circumstances stated, Judge Swayne resided in his district within the meaning of the act of Congress which provides that—

Every judge shall reside in the district for which he is appointed, and for offending against this provision shall be deemed guilty of a high misdemeanor.

If he did not actually reside in the northern district of Florida during the years from 1894 to 1900, he was guilty, under the act, of a high misdemeanor and should be convicted. If he did reside there within the meaning of the act, then he ought to be absolved of this charge.

The act itself speaks with no uncertain sound. Its meaning is very plain. Its reason and spirit are not in doubt. When Congress passed the act it can not be doubted that the purpose was to secure the bodily presence of a judge in his district, not a part of the time, but practically all of the time. Plainly a judge can not attend to the necessary business of his office as he ought unless he lives where the law says he shall live. He did not live there, unless his claim that he intended to take up his residence in Pensacola and his temporary sojourn there from time to time constitutes residence. His efforts to rent or buy or build a house, his request to be registered, certainly did not make him a resident either in law or in fact. His brief sojourn at a hotel or boarding house during his terms of court did not gain for him either a legal or an actual residence. It is idle to say that Judge Swayne complied with the intention or spirit of the law, of which he does not claim that he was ignorant, by staying sixty-one days in each year in Florida, ninety-three days holding court in other districts, and two hundred and twelve days in Guyencourt, Del., 1,000 miles from his district. If his excuse can avail to shield him, then the law is a dead letter.

Whether the people were or were not inconvenienced is not of the least importance, but if the fact were material the proof will not be lacking.

A minister of the law ought not to be a willful, persistent evader of the law. He was under legal obligation to live in his district; if he did not, he was guilty of a high misdemeanor for which he could be indicted, convicted, and punished. He certainly was guilty of a gross

misbehavior which demonstrated his unfitness to impose the penalties of the law upon others when he was a violator of the law himself.

There should be no hesitation about convicting Judge Swayne for his failure to obey this law. The fact is clear enough that the purpose of the law has been frustrated. The people of the northern district of Florida have been deprived of its benefits for the convenience of Judge Swayne. They have a right to complain; they have complained. The question now is, Shall their complaint be heard, and shall Judge Swayne go free or take the punishment due to his offense?

THE CONTEMPT CASES.

The eighth, ninth, tenth, and eleventh charges pertain to the conviction, fining, and imprisonment of Davis, Belden, and O'Neal for contempt of court and are most serious. They involve the right of a Federal judge to take away the liberty of a citizen of the United States and to impose upon him a disgraceful punishment without authority of law. They involve the right of a citizen to the protection of that clause of the Constitution which provides "that trials of all crimes, except cases of impeachment, shall be by jury, in a case where the law gives a trial by jury," and that other clause forbidding the infliction of "cruel and unusual punishment."

From the testimony it will appear that Elsa T. Davis and Simeon Belden, two reputable lawyers, were charged by Judge Swayne on Monday, tried by Judge Swayne at 10 a. m. Tuesday, and at 11.10 p. m. were in the county jail under sentence imposed by Judge Swayne. The charge against them was contempt of court. The alleged contempt consisted in bringing an action of ejectment in the court of Escambia County, Fla., in the name of their client, Florida McGuire, who claimed to be the owner of a lot of land, against Judge Swayne, who had bargained for the land and agreed upon the terms of purchase from an adverse claimant.

The facts of the case, as they will appear in the testimony, are as follows:

In the year 1901 an action of ejectment was pending in the circuit court of the United States at Pensacola in which Florida McGuire was plaintiff and the Pensacola City Company and numerous individuals, among them W. A. Blount and W. Fisher, attorneys at law, were defendants, for a tract of land called the "Rivas" or "Chavaux" tract. The plaintiff's lawyers were Louis Paquet and Simeon Belden, of New Orleans. In the month of October, in the year of 1901, Paquet and Belden joined in a letter to Judge Swayne, which they addressed to him at the place where he resided when not holding court in his district or elsewhere, viz, Guyencourt, in the State of Delaware, stating that they had been informed that he, the said Charles Swayne, had purchased a portion of the land in controversy in the said ejectment suit, viz, block 91, in the business part of the city of Pensacola, and requesting him to recuse himself and arrange for some other judge to preside at the trial of the case. To this letter no answer was returned by Judge Swayne.

At the term of court which convened at Pensacola in November Judge Swayne announced on the 5th of November that a relative of his had purchased the land, but later in the week he volunteered from the bench that the relative was his wife, and that she had purchased

the land with money obtained from her father's estate. That the bargain had not been concluded for the reason that the owner, Mr. Edgar, offered a quitclaim deed. The evidence shows that the agents of Edgar, with whom Judge Swayne negotiated the purchase of block 91, and also of another lot, wrote him stating that Edgar would not give a general warranty because he was afraid of the old Caro claim. Swayne answered, saying that they might drop out block 91 without stating a reason. The agents had pending in October, when the letter to Swayne was written, a suit in the State court against Edgar for commission on the sale to Swayne. The agents had taken Judge Swayne over the tract, and had agreed upon the terms and had sold block 91 to him.

The custom in Judge Swayne's court was to dispose of the criminal calendar first, and when that was concluded to call the civil list, and set the cases for trial at convenient times in the future. The criminal cases were not concluded at the November, 1901, session until about 5 o'clock Saturday night. Judge Swayne then took up the civil list, upon which the case of Florida McGuire appeared, and made a further statement that the member of his family who had contracted through him for block 91 was his wife, and that she was purchasing with money derived from her father's estate. He declined to recuse himself, and stated that the case would be heard on the Monday following unless legal ground for continuance was laid.

The plaintiff's lawyer, Paquet, asked that the case should be set down for Thursday of the following week, averring that it was too late to summon witnesses that night; that Sunday they could not be summoned, and therefore the case could not be ready on Monday. This request was refused by Judge Swayne, who insisted that the case should go on on Monday. At about 5.30 or 6 o'clock the court adjourned. Neither Simeon Belden nor E. T. Davis was present in court at any time when Judge Swayne made announcement concerning his connection with the purchase of block 91, Belden being ill with facial paralysis and confined to his bed at the hotel in Pensacola. E. T. Davis was not of counsel in the case and had no connection with it up to the time that court adjourned on Saturday, November 9, at 6 o'clock. During the evening Paquet drew up the necessary papers to commence an action of ejectment in the county court of Escambia County, Fla., against Judge Swayne for this block 91, upon the theory that he had contracted for the land with Edgar, who claimed to own it, and who had admitted that he was in possession and that the contract was subsisting between them, and that the title of the alleged owner could be tried out in the State court, where the parties would get better justice, Swayne standing in the shoes of Edgar. They took the liberty of believing, from all the evidence, that Judge Swayne was the real purchaser, though he had said that the title was to be taken by his wife.

E. T. Davis was employed to bring this suit that night as local counsel. At the same time it was agreed that the suit of Florida McGuire in Judge Swayne's court should be dismissed on Monday. Davis was engaged to do it, Paquet having been called to New Orleans by sickness in his family. The suit against Judge Swayne was brought that Saturday night and the process served on him. On Monday, at the opening of the court, Mr. E. T. Davis asked for and obtained from Judge Swayne an order dismissing the suit of Florida McGuire. Immediately thereafter W. A. Blount, esq., one of the defendants,

and also attorney for defendants, arose and suggested that Paquet and Belden, attorneys for Florida McGuire, and Davis, who appeared to ask for a dismissal of the suit, had been guilty of contempt of court for bringing suit against Judge Swayne in the county court of Escambia County. This action was in pursuance of a previous conference between Blount and Swayne held before court convened, when it was agreed upon. Judge Swayne ordered a rule to show cause upon an unsworn statement prepared by Blount, which was served on Davis and Belden, Paquet being absent. The next day (Tuesday) Davis and Belden appeared and submitted an answer purging themselves of the contempt and averring their right, as counsel, to bring the suit.

Some testimony was taken to show that the suit against Judge Swayne had been brought and process served on him Saturday night about 8 o'clock; that was all. Whereupon Judge Swayne proceeded to adjudge Belden and Davis guilty of the "charges which were in violation of the dignity and good order of the said court and a contempt thereof," and after some abusive remarks sentenced them to be disbarred for the term of two years, to pay a fine of \$100 each, and to undergo an imprisonment for the period of ten days in the county jail.

They were duly committed and remained confined three days, when they were released pending a habeas corpus allowed by Judge Pardee, of the circuit court. That habeas corpus case resulted in a decision that Judge Swayne had jurisdiction of Belden and Davis in a contempt proceeding, as the averment in the paper filed by Blount was that they were officers of the court, and therefore the circuit court could not question his decision, his findings of fact, or the correctness of his judgment that they had committed a contempt, except in so far as he had exceeded his jurisdiction by imposing both fine and imprisonment, the statutes providing in certain cases for fine or imprisonment as a punishment for contempt. To that extent the decision of Judge Swayne was reversed and the culprits allowed to choose which they would suffer, fine or imprisonment. Belden, who was a very sick man, about 70 years of age, chose to serve out his sentence in prison; Davis paid the fine of \$100.

I make the following propositions:

First, that the Federal courts of the United States are limited as to the cases in which they can punish and in their power to punish contempts by the act of March 2, 1831.

Second, that Davis, Belden, and O'Neal, who were committed to prison for an alleged contempt of court, did nothing which gave Judge Swayne the lawful authority to punish either of them for contempt under the act of 1831, or any other act.

Third, that if Judge Swayne had authority under the act aforesaid to punish either of them for a contempt, and if they were properly adjudged guilty, he abused his power by imposing upon them an unlawful sentence.

Fourth, that Judge Swayne imposed the unlawful sentence either knowingly or ignorantly. If knowingly, he is guilty; if ignorantly, he is guilty if he did it with a bad motive, maliciously, or with intent to punish a personal affront.

FIRST PROPOSITION.

That the Federal courts of the United States are limited in their power to punish contempts by the act of March 2, 1831; which act I ask that the Secretary may read.

The Secretary read as follows:

CHAP. XCIX.—*An act declaratory of the law concerning contempts of court.*

Be it enacted, etc., That the power of the several courts of the United States to issue attachments and inflict summary punishments for contempts of court shall not be construed to extend to any cases except the misbehavior of any person or persons in the presence of the said courts, or so near thereto as to obstruct the administration of justice, the misbehavior of any of the officers of the said courts in their official transactions, and the disobedience or resistance by any officer of the said courts, party, juror, witness, or any other person or persons, to any lawful writ, process, order, rule, decree, or command of the said courts.

SEC. 2. *And be it further enacted,* That if any person or persons shall, corruptly or by threats of force, endeavor to influence, intimidate, or impede any juror, witness, or officer in any court of the United States in the discharge of his duty, or shall, corruptly or by threats of force, obstruct or impede, or endeavor to obstruct or impede, the due administration of justice therein, every person or persons so offending shall be liable to prosecution therefor by indictment, and shall, on conviction thereof, be punished by fine not exceeding \$500 or by imprisonment not exceeding three months, or both, according to the nature and aggravation of the offense.

Approved, March 2, 1831.

Mr. Manager PALMER. Mr. President, it will be observed that the act divides contempts into two classes:

1. Those which may be punished summarily by the court.
2. Those which must be punished after indictment and trial by jury.

Every doubt as to the nature and character of the offenses punishable under this act, and as to the fact that it is a limitation on the power of the Federal court, is removed by the decision of the Supreme Court in *Ex parte Robinson* (19 Wall., 211), as follows:

The act of 1831 is therefore to them (the district courts) the law specifying the cases in which summary punishments for contempt may be inflicted. It limits the power of these courts in this respect to three classes of cases:

First, where there has been misbehavior of a person in the presence of the court, or so near thereto as to obstruct the administration of justice.

Second, where there has been misbehavior of any officer of the court in his official transaction; and,

Third, where there has been disobedience or resistance by any officer, party, juror, witness, or other person to any lawful process, order, rule, decree, or command of the courts. And thus seen, the power of these courts in the punishment of contempts can only be exercised to insure order and decorum in their presence, to secure faithfulness on the part of their officers in their official transactions, and to enforce obedience to their lawful orders, judgment, and processes.

Other contempts, viz, those committed out of the presence of the court which are intended to obstruct or impede the due administration of justice, make the offender liable to prosecution therefor by indictment.

The history of this act is interesting and important. The case of Judge Peck had been tried before the Senate in 1830. This act was passed immediately thereafter to remedy the wrongs that case disclosed. One of the main questions in the case was whether the power of the Federal court to punish contempts was derivable from the common law, or whether it was limited by the act of September 24, 1789, the seventeenth section of which provided that all the said courts of the

United States "shall have power to administer all necessary oaths or affirmations, and to punish by fine and imprisonment, at the discretion of said courts, all contempts of authority in any cause or hearing before the same."

Upon the one hand the contention was that the Federal courts were of limited jurisdiction, and unless a statute or constitutional provision could be found conferring power, no such power could be exercised. Upon the other hand the claim was made with great vigor and zeal that all courts have the inherent right to protect themselves and maintain their authority by punishing for contempt all who disturb the court or who directly or indirectly defy its orders and decrees, or do anything to bring court or judge into disrepute. It was claimed that all the power to punish contempts of every kind possessed and exercised by the courts in England before the revolution was possessed by and could be lawfully exercised by the Federal courts.

Nothing was settled by the result of the trial of Judge Peck, the vote being 22 to 21 against conviction. To meet the doubt and settle the uncertainty as to the power of the Federal courts to punish contempt, Mr. Draper, a member of the House, introduced the following resolution:

Resolved, That the Committee on the Judiciary be directed to inquire into the expediency of defining by statute all offenses which may be punished as contempt of the courts of the United States; to which the following amendment was added: "And also to limit the punishment of the same."

He said, as reported in Gales & Seaton, for 1831 (p. 559), that he had offered this resolution under the deepest sense of duty. It was not his intention on this occasion to agitate a question which had recently been much agitated elsewhere, but, said he:

I do wish to know upon what tenure the people of this country hold their liberties. * * * I am not for holding my liberty for one moment at the discretion of any individual. It may be said, sir, in opposition to the resolution, that there will be difficulty in defining contempts of court. Though this may be true, we shall find no difficulty in defining what are not contempts of court.

We might say, for example, that it would not be a contempt of court to express an opinion upon any decision finally made by the court; we might declare that it should not be a contempt of court for anyone to say that a judge is not immaculate.

I beg not to be misunderstood as here referring to a case which has lately been before the other branch of the Legislature sitting as a high court of impeachment. Far be it from me to reflect upon the conduct of any individual who for such conduct has been constitutionally tried and legally acquitted. But the law ought to be so clear that any individual may be able to look to the statute book and know whether in anything that he may do he acts within the law or not. * * * It is proper, sir, that every individual in the community should know what are the laws which he is bound to observe at the peril of his liberty.

The act of 1831 was reported by Mr. Buchanan from the Judiciary Committee in pursuance of this resolution.

It most clearly appears that the intent of the act was to define and limit the powers of the Federal courts over contempts and to limit their power to punish. There can be no doubt the intent was effectuated. Any man may read this wholesome statute and know the law which he is bound to observe at the peril of his liberty. Congress tried to make the law so plain that any man could read and understand it, not excepting a judge.

SECOND PROPOSITION.

Davis, Belden, and O'Neal, who were committed to prison for an alleged contempt of court, did nothing which gave Judge Swayne the lawful authority to summarily punish either of them for a contempt of court under this statute or any other law, since this is the only law conferring power upon the Federal courts to punish for contempt. First, because the alleged contempt was not committed in the presence of the court, or so near thereto as to obstruct the administration of justice; second, it was not a misbehavior of any officer of Judge Swayne's court in their official transactions; third, it was not a disobedience or resistance by any officer of said court or any other person to any lawful writ, order, rule, decree, or command of the said court.

It was, if all that Judge Swayne asserted was true as to the motive of Davis and Belden, nothing more than a violation of section 2 of the act, punishable by indictment and not by proceedings in contempt. The theory upon which Judge Swayne sentenced these persons was that they intended to disgrace and force him to recuse himself. If it occurred anywhere outside of Judge Swayne's jurisdiction, it was not an official transaction, and if it was not, men can not be lawfully cast into prison for having bad intentions.

For these reasons the conclusion seems inevitable that the actions of these lawyers were not within the statute of contempt, and that Judge Swayne abused his authority when he fined and imprisoned them.

As we have seen, the act of 1831 divides contempts into two classes, one class to be punished summarily by the court—the other class is punishable by indictment and not by summary proceeding by the judge.

The second section of the act of 1831 provides for the punishment by indictment of persons who shall corruptly or by threats or force obstruct or impede or endeavor to obstruct or impede the due administration of justice. Such persons can not be summarily punished under the first section for a contempt of court.

Judge Swayne stated on that occasion—not before a committee of the House—and we shall prove it, that the lawyers brought the suit against him and published the article in the paper for the purpose of forcing him to recuse himself in the case of Florida McGuire. Suppose, for the sake of argument, that they did it for the reason assigned by the judge. That would amount to an endeavor to obstruct or impede justice from his standpoint, and would, therefore, be the subject of an indictment. The act was passed to cover the case of a lawyer who published a severe criticism of the opinion of a judge, and who was disbarred for it. Congress said that should not happen again when the act of 1831 was passed, and that such an offense should be punished by indictment only.

THIRD PROPOSITION.

That if Judge Swayne had authority under the act aforesaid to punish either of these men for contempt, and if they were properly adjudged guilty, he abused his power by imposing upon them an unlawful sentence. To state this proposition is to argue it.

That the sentence was unlawful no one denies. Judge Swayne disbarred Davis and Belden for two years, which he could not lawfully

do in a contempt proceeding under the act. He imposed both fine and imprisonment in a case where the law plainly limits the punishment to fine or imprisonment. He rectified the first error; the circuit court the other. That is to say, after he imposed this awful sentence of disbarment for two years upon these lawyers, his *amicus curiæ*, Mr. Blount, stepped up to the bench and informed the judge that he could not disbar these men in a contempt proceeding. Thereupon, he reflected for a moment and took off the two years' disbarment.

Judge Swayne could not lawfully hang or burn or banish Davis and Belden; he could lawfully do no more than the law allowed; and if he did more, he abused his power and should be convicted.

FOURTH PROPOSITION.

Judge Swayne imposed this unlawful sentence either knowingly or ignorantly. If knowingly, he is guilty. If ignorantly, he is guilty if he did it with a bad motive, maliciously, or with intent to punish a personal affront.

The first question, then, is, Did he impose the unlawful sentence knowingly and willfully? Upon that point it may be said every man is presumed to know the law and can not plead ignorance in justification or as an excuse for violation thereof. A judge must be learned in the law, and he can not escape the presumption that applies to the most ignorant. If Judge Swayne is held to the rule, he knew the law actually. If he, knowing the law, violated it, he must have done it willfully and knowingly. The presumption of the law is that he did know the law.

I quote:

In general, every person is presumed to know the law of the country where he dwells or where, if residing abroad, he prosecutes business (*Lyon v. Richmond*, 2 John., 51-60), and within limits the presumption is conclusive.

Ignorance is no defense in either civil or criminal cases. Under no circumstances can one justify the act by the naked showing that when he did it he did not know the existence of the law violated. Not even in general is the excuse valid that he endeavored to ascertain the law and was misled by advising counsel. *Ignorantia juris non excusat* is a rule of our jurisprudence, as of the Roman, whence it was derived. (Bishop's Criminal Law, par. 168, p. 294.)

Judge Swayne, of all men, ought not to be allowed to escape this presumption, especially in a case in which he was judge, jury, and executioner.

Secondly, do the circumstances that surround the transaction prove that Judge Swayne in imposing the unlawful sentence had malice, ill will, or a disposition to use his power to punish contempt for the purpose of punishing a personal affront?

Malice, ill will, and hatred are conditions of the mind. It is not to be expected that a judge who intends to use his judicial power to gratify his malice or ill will or to punish one he hates will declare the fact in advance or confess it after the sentence is pronounced. If the fact can be proved in no other way, then there is no limit on the power of the judges to punish their enemies under the cloak of punishing contempts of court.

But there is another way to prove the state or condition of mind and the actuating motives of laymen and judges. Being human, a judge is to be judged by the rules that apply to other men. Being a minister of the law, he is not, therefore, above the law. The law holds

every man accountable for the natural and reasonable consequences of his acts. If I send a bullet into a vital part of my enemy's body and he dies the law presumes that I meant to kill. It would be a silly defense to say I did not know that death would follow, or that I did not know the act was unlawful. That plea would not stand a second. If I carry away my neighbor's goods and convert them to my own use the law presumes that I meant to steal. It would be a foolish excuse to say that I did not know theft was unlawful.

Judge Swayne imposed an unlawful sentence in that he fined and imprisoned under a law that forbade him to do both. There is no room to argue that the statute is doubtful or that Judge Swayne innocently interpreted it wrongfully. To claim such an excuse for him would be in effect to condemn his judicial capacity. He makes no such excuse for himself. On the contrary, he stoutly defends his action on the ground that he made no mistake in punishing Davis and Belden for contempt. I do not believe he will be obliged to any zealous friends who make it for him. But if he seeks to excuse himself, or if his friends seek to excuse him, on the ground that he was ignorant of what he surely ought to have known and of what the law presumes he did know, then we may look further and see if his ignorance was accompanied with malice or ill will. If he knew this law, and knowingly violated it, he is subject to impeachment, and no man can honestly say nay. If, ignorant of the law, he imposed the unlawful sentence with malice, he is subject to impeachment, and no man can say nay.

That he was actuated by motives of revenge and hatred is evidenced by the fact that he, in the first instance, suspended the lawyers from practice for two years. He took that back when Blount told him it was wrong.

If Judge Swayne had intended to do these men justice and not to wreak vengeance, he would have given "a moment's reflection" to the case before pronouncing this most unwarranted and severe sentence. What is it to a lawyer to be disbarred for a period of two years? The lawyer's capital is the confidence of his clients. That lost, his occupation is gone. Suspension from practice for so long a term as two years is simply destruction of a lawyer's business. The effect of such a sentence would be to destroy a lawyer's chances to get business, because clients would distrust the ability of a man to gain causes in a court when the relations between lawyer and court were unfriendly. The public generally look upon a disbarred lawyer as disgraced beyond redemption and unworthy of confidence or trust. In short, two years' disbarment in any court spells ruin to a lawyer.

The Supreme Court of the United States make some pertinent remarks on this subject in the case *Bradley v. Fisher* (13 Wallace, p. 355), as follows:

Admission as an attorney is not obtained without years of labor and study. The office which the party thus secures is one of value and often becomes the source of great power and emolument to its possessor. To most persons who enter the profession it is the means of support to themselves and their families. To deprive one of an office of this character would often be to decree poverty to himself and destitution to his family. A removal from the bar should, therefore, never be decreed where any punishment less severe, such as a reprimand, temporary suspension, or fine would accomplish the end desired. (*Brady and Fisk*, 13 Wall., p. 355.)

Davis was a young man. He had been practicing three and one-half years. Belden was about 70 years of age, and had been laid up at his

hotel with paralysis. Common humanity would have bidden Judge Swayne to "reflect a moment" before he ruined Davis and cast into prison a man who had nearly passed three score years and ten of an honorable life. That Judge Swayne did not reflect is evidence of a disposition and willingness to strike without regard to right or consequences in the heat of passion.

It is no answer to say that Judge Swayne eliminated that part of the sentence. That did not eliminate the state of mind that induced its imposition.

It is no answer to say that Judge Swayne was angry, and that he had a right to be angry. Even he does not make that excuse for himself. His defenders find excuses that he never dreamed of.

His only interest, according to his view, was "protecting the dignity of the court." He claims that "he had no malice or personal feeling," and, amazing fact, he points to the leniency of the sentence as evidence of his want of personal feeling. He says he might have given them ten months instead of ten days. He calls two years' suspension, \$100 fine, and ten days in jail moderation. If such a sentence is a minimum, may God pity the poor wretch upon whom the vengeance of Judge Swayne falls with full force.

Still endeavoring to arrive at the motive of Judge Swayne, we shall point to the testimony of what occurred before the arraignment and conviction of Davis and Belden. Judge Swayne saw the publication in the Sunday papers. It was as follows:

JUDGE SWAYNE SUMMONED AS PARTY TO THE SUIT IN CASE OF FLORIDA M'GUIRE v. PENSACOLA COMPANY ET AL.

A decided new move was made in the now celebrated case of Mrs. Florida McGuire, who is the owner by inheritance and claims the possession of what is known as the "Rivas tract," in the eastern portion of the city, near Bayou Texas, by the filing of a præcipe for summons, through her attorneys, ex-Attorney-General Simeon Belden, Judge Louis P. Paquet, of New Orleans, and E. T. Davis, of this city, in the circuit court of Escambia County, in an ejectment proceeding for possession of block 91, as per map of T. C. Watson, which, as part of the property which is claimed by Mrs. Florida McGuire, and which is alleged that Judge Swayne purchased from a real estate agent in this city during the summer months, and which is a part of the property now in litigation before him.

The summons was placed in the hands of Sheriff Smith late last night for service. Filed November 12, 1901.

F. W. MARSH, Clerk.

Having read this article in the Sunday newspaper, announcing that suit was brought, Judge Swayne communicated with Blount, defendant's counsel, also one of the defendants. He called up Blount over the telephone and asked Blount if he had seen this newspaper article. Blount said he had not seen it, but promised to get it. Next morning Judge Swayne and Blount conferred, and as soon as the Florida McGuire case was discontinued with the consent of the court, behold Blount, the very last man in the world who should have interfered in such a matter, arose and suggested to the court that a contempt had been committed. A wonderful, spontaneous unanimity of opinion seemed to exist between Judge Swayne and Blount, lawyer and defendant. They both arrived at the conclusion, in pursuance of their conference in the morning, that the dignity and good order of the court had been infringed upon, and the proceeding was commenced. The impropriety on the part of the judge in inviting Blount, lawyer for

defendants and defendant himself, to inaugurate and conduct a contempt proceeding would be manifest in any case. In this case it is particularly reprehensible because Blount knew nothing about the case until it was mentioned to him by Judge Swayne. Judge Swayne knew all the facts. Whether the dignity of his court had been offended or its good order disturbed was for him, and not for Blount, to say. It would have been proper for him to call the offending lawyers before the bar of the court, state to them the charges, submit to them the interrogatories that the law prescribes in every case of indirect contempt, and give them the opportunity to which they were entitled to purge themselves on oath. Since Blackstone wrote, the law has never been changed in this particular.

If a party can clear himself on-oath, he is discharged. (*Burke v. The States*, 214 Ind., 528; 4 Bl. Com., 286, 287; *Wilson v. Walker*, 82 N. C., 95; *U. S. v. Dodge*, 2 Gall., 313, Circuit Court of the United States, first circuit of Massachusetts; in re John I. Pitman, 1 Curtis, 189; in re *Wilson v. Walker*, 82 N. C., 95.)

But Judge Swayne chose a different course. He selected the one man whose grist he had insisted upon grinding in his judicial mill, and who had been able, through Judge Swayne's refusal to recuse himself, to force a discontinuance of the case, and who might, therefore, be supposed to feel willing to do the dirty work of the judge, to institute and prosecute the proceedings for contempt. This course indicated what Judge Swayne was after, and the state of mind with which he went for it.

This animus was clearly shown by the language he used in imposing sentence. These unfortunate men were summoned to answer one day, tried the next, if the exceedingly perfunctory hearing could be called a trial, and immediately called for sentence. They were members of a learned profession. Judge Swayne designated them before the bench as "ignorant," which he had no right to do under any circumstances. The question of their learning or ability was not in issue, and no evidence had been received on that subject; but Judge Swayne did not hesitate to do them all the injury in his power by judicially determining this immaterial but to them vastly important fact. They went out of the court branded as "ignorant," therefore unfit to practice in any court. Not content with this most unfounded and unjustifiable accusation, Judge Swayne descended to personal abuse. He said they were a "stench in the nostrils of the people," signifying that there was something putrid or rotten in their physical condition or their moral character. A stench proceeds only from an exceedingly disgusting source. These lawyers stood before the bar in open court, powerless and helpless, and heard the filthy denunciation of Judge Swayne, and their neighbors heard it, too. Execution swiftly followed judgment. No time was lost to wait for a habeas corpus or appeal. Vengeance demanded speedy incarceration in the county jail. Judge Swayne issued the commitment, and that night Elsa T. Davis, the young man, and Simeon Belden, the old man, lodged behind the bars with the common criminals.

If this conduct on the part of Judge Swayne does not prove that he was actuated by something beyond a desire to vindicate his court, then no evidence can establish the fact short of a declaration of intention by the judge before the act or a confession afterwards. To my mind it conclusively proves that he was actuated by a bad motive, and, whether knowingly or ignorantly, he ought to be impeached for it.

Lastly, the severity of the sentence is a convincing proof of the bad motive of Judge Swayne. Let it be remembered that if the motive of the accused was to force Judge Swayne to recuse himself, they had failed to accomplish anything. Their suit had been discontinued, and at the time the sentence was passed there was no intimation that it would ever be heard of again. There had been no infraction of the good order of Judge Swayne's court. If the dignity of the court had been assailed and injured it was by conduct that might or might not bring the judge into disrepute. The conduct consisted in doubting the word of the judge and in bringing the suit late Saturday night, in serving him that night, and in publishing the fact that the suit had been brought in the paper the next morning. If, then, from the facts, Judge Swayne was right in believing that the dignity of his court had been hurt, a reprimand and warning would have been considered ample punishment by any judge who really had any dignity worth the name. A moderate fine would certainly have been sufficient, or, if real and substantial injury had been done, the disgrace and shame of twenty-four hours in jail would have been regarded by the community and any right-minded judge as ample punishment for the offense.

In substance the case of Judge Peck was not unlike the present case. The offense was by a lawyer out of court. The conduct was held by the judge to tend to bring his court into disrepute and himself into contempt.

The managers of the impeachment on the part of the House laid great stress on the severity of the punishment as evidence of the ill will and hatred. Mr. Buchanan, manager on the part of the House, said:

The judge without further delay pronounced the fatal sentence against Mr. Lawless of imprisonment for twenty-four hours and a forfeiture of his means of livelihood for eighteen months.

Was not this a cruel and unusual punishment? Does it not violate an express provision of the Constitution? Why should he not have been satisfied with the infliction of a fine? Why not punish Mr. Lawless through his pocket? It is not pretended that he had before ever shown any want of respect for that court. This was the first instance. Even if the judge had possessed the power, a fine of fifty or one hundred dollars would have answered every purpose of punishment and would have been sufficient to warn others against offending in like manner. This in every point of view would have been infinitely better. But no; Mr. Lawless would be disgraced. He must be sent to gaol. He must never appear again in that court as the advocate of any of the land claims, to acquire a thorough knowledge of which he had devoted several of the best years of his life. I ask one and all of you to consider seriously the nature and extent of this punishment and the provocation. Can it have proceeded from a pure motive and a virtuous intention? Was it merely to vindicate the character of the court, the honor of the judiciary?

If the punishment in that case could be deemed with propriety as cruel and unusual and as evidence of the vindictiveness of the judge, with how much added force may those who manage this case on the part of the House insist that the sentence of Davis and Belden was an evidence that it was not an insult to the dignity of the court that was being punished, but an insult to the man who for the time being chanced to be the judge of that court. In that case there was no fine; in this the fine was \$100. In that case the imprisonment was twenty-four hours; in this case ten days. In that case the suspension from practice was for eighteen months; in this case it was for two years. In that case no law forbade the nature or extent of the punishment; in this case a plain and particular statute was violated. The sentence was not only cruelly severe, but it was undeniably unlawful.

These considerations can not fail to convince that Judge Swayne misbehaved in his office of judge, in imposing an unlawful sentence. If he did it knowingly, then the law supplies the element of malice. If he did it ignorantly, then the circumstances show malice beyond a reasonable doubt. In either case he has committed an impeachable offense.

O'NEAL'S CASE.

The twelfth article pertains to O'Neal's case, who was committed to jail for sixty days for contempt of court. The managers will attempt to establish that Judge Swayne had no right, power, or authority to condemn W. C. O'Neal for a contempt of his court under the act of 1831, limiting and defining contempts in Federal courts, (a) because O'Neal did not commit a contempt in the presence of the court, or so near thereto as to obstruct the administration of justice; (b) because he was not an officer of the court, therefore his act could not have been an official transaction; (c) because he did not resist any order, decree, or judgment of the court; (d) because he purged himself on oath of all design or thought of committing a contempt.

O'Neal was held and condemned to prison for sixty days on the theory that because one Greenhut, a receiver in bankruptcy, was disabled in a fight with him, he could not perform his duty as receiver for a number of days, and because he, O'Neal, brought on the fight by reproaching Greenhut for doing an act which he did as receiver, and therefore O'Neal interfered with the business of the court.

There was no pretense that O'Neal ever thought for one moment about Judge Swayne or his court when he fought with Greenhut, or that he intended to disable Greenhut so that he could not do his duty as receiver. If he committed a contempt it was unintentional on his part. He purged himself on oath as follows:

That it is not true that the assault charged in the said affidavit was committed by the respondent solely because and for the reason that the said Greenhut had instituted the suit aforesaid against the said American National Bank, or to interfere with and prevent him, the said Greenhut, from exercising and performing his duties as an officer of this court. That in truth the respondent never contemplated at any time any interference with the said Greenhut as trustee as aforesaid, or contemplated any affray with the said Greenhut, or any personal conflict with him until he saw the threatening attitude of the said Greenhut toward him, the respondent, as hereinbefore set forth, and that so far as respondent can determine from the actions of the said Greenhut, who was the aggressor as aforesaid, the cause of the said affray was the remark of respondent to the said Greenhut concerning the said Greenhut's action in repudiating his obligation to pay the said acceptance.

And respondent disclaims the existence on his part at any time of any intent to interfere with, prevent, impede, or delay the said Greenhut in the prosecution of the said suit against the said bank, or to interfere with or impede or prevent him in any wise in the execution or performance of any of his duties as such trustee, and specially disclaims any intent to do any act which might savor in the slightest degree of contempt of this honorable court.

W. C. O'NEAL.

W. C. O'Neal, being duly sworn, says that he has read the foregoing answer and that the statements therein made are true.

W. C. O'NEAL.

Sworn to and subscribed before me this 18th day of November, A. D. 1902.

[SEAL.]

JNO. PFIEFFER, Notary Public.

He further set forth all the facts of the difficulty and swore that he struck in self-defense against the assault of a much larger and stronger man.

Under these circumstances it was an unspeakable outrage to inflict upon O'Neal the excessive and disgraceful punishment of imprisonment for sixty days in the common jail.

Outside the walls of this Chamber, all over the land, on every plain and hill, there is an eager multitude of conscientious men and women waiting for the verdict. They know nothing of and care nothing for lawyers' quibbles or excuses. In their simplicity they believe in truth, virtue, honesty, integrity. They are the plain people, the kind that Mr. Lincoln said he believed God loved because he made so many of them. They believe that a judge who "turns aside after lucre and takes bribes" also "perverts judgment," as did the sons of Samuel. They believe that the law was made to punish the great as well as the small, and that even a judge who does a dishonest act that would send a common criminal to the common jail ought not to go free. They can not conceive how this great court can condone the petty larceny of a few paltry dollars from the public Treasury, or the unlawful appropriation of the property of a helpless bankrupt railroad, or the willful and persistent evasion of a wholesome and necessary statute of the United States by one who was bound by the obligation of an oath to administer the law to others, or the cruel punishment unlawfully visited upon learned and honorable men to avenge a personal affront.

They are waiting to see if one who sold "the mighty space of his large honors for so much trash as may be grasped thus" is to be forgiven because he says other men committed a like offense, and because someone fears that the whole judicial system is rotten to the core, and that if he goes others must follow.

The House of Representatives, in the name of all the people of the United States, for so the indictment reads, have preferred these charges against Judge Swayne, and have laid before this high court the reasons which they believe make the charges good. They ask for nothing but a fair trial, which they know they will get. They demand nothing but justice. If this judge has behaved himself well, he is entitled to be acquitted and to go with the commendation, "Well done, good and faithful servant." If he has behaved himself ill, then the people of the district over which he was unfortunately selected to preside are entitled to be rid of him, and the people of the United States are entitled to believe and know that their judicial system, which is filled with men of the highest honor and of the highest integrity, shall be kept unsullied and pure.

THE PRESIDING OFFICER. Are the managers ready to proceed with the examination of witnesses?

MR. MANAGER OLMSTED. Mr. President, we shall possibly be able to put in a little evidence this evening. A witness whom we desired to call at the very outset is in the city, I am informed, but has not yet reached the Capitol.

THE PRESIDING OFFICER. If there are any witnesses in attendance whom the managers can put on, the Sergeant-at-Arms will call them.

MR. MANAGER OLMSTED. We can proceed for a time.

THE PRESIDING OFFICER. If the managers will indicate what witnesses are desired, the Sergeant-at-Arms will call them.

Mr. Manager OLMSTED. Mrs. Annie E. Russell is desired. She is from Texas. I understand she has reached the city, but probably did not know that she was to be in attendance here at this time.

Mr. President, I offer a duly certified copy of the commission of Charles Swayne as district judge for the northern district of Florida. I presume—

Mr. HIGGINS. There is no objection to it.

Mr. Manager OLMSTED. I should like to have the commission read. It is not necessary to read the certificate.

The PRESIDING OFFICER. The Secretary will read the commission.

Mr. Manager OLMSTED. We will waive the reading of the formal part. Of course it will all go in the record.

The Secretary read the commission.

The certificate and commission are as follows:

UNITED STATES OF AMERICA,
DEPARTMENT OF JUSTICE,
February 6, 1905.

Pursuant to the act of Congress of February 22, 1849, I hereby certify that the annexed paper is a true copy of the original record of the commission of Charles Swayne as United States district judge for the northern district of Florida on file in this office.

In witness whereof I have hereunto set my hand and caused the seal of the Department of Justice to be affixed on the day and year first above written.

[SEAL.]

WILLIAM H. MOODY, *Attorney-General*.

Benjamin Harrison, President of the United States of America. To all who shall see these presents, greeting:

Know ye: That reposing special trust and confidence in the wisdom, uprightness, and learning of Charles Swayne, of Florida, I have nominated, and, by and with the advice and consent of the Senate, do appoint him United States district judge for the northern district of Florida, and do authorize and empower him to execute and fulfill the duties of that office according to the Constitution and laws of the said United States, and to have and to hold the said office, with all the powers, privileges, and emoluments to the same of right appertaining unto him, the said Charles Swayne, during his good behavior.

In testimony whereof I have caused these letters to be made patent and the seal of the Department of Justice to be hereunto affixed. Given under my hand, at the city of Washington, the 1st day of April, in the year of our Lord 1890, and of the Independence of the United States of America the one hundred and fourteenth.

[L. S.]

BENJAMIN HARRISON.

By the President:

W. H. H. MILLER, *Attorney-General*.

Mr. Manager OLMSTED. Mr. President, it is not necessary, probably, but I think it desirable for purposes of convenience, to offer a portion of the sundry civil appropriation act of June 11, 1896, the clause containing the part relative to the payment of the expenses of district judges holding court outside of their own districts. I do not think the gentlemen on the other side will care to have the whole act offered, but I offer, on page 451, volume 29, of the United States Statutes at Large, the paragraph I have marked.

Mr. HIGGINS. The act of what year?

Mr. Manager OLMSTED. The act of 1896. I will ask to have it read.

Mr. HIGGINS. What month?

Mr. Manager OLMSTED. It is the sundry civil appropriation act for the year ending June 30, 1897, approved June 11, 1896.

Mr. HIGGINS. June 11?

Mr. Manager OLMSTED. June 11, 1896. We offer it as it is the only law in force during the period covered by the first article of impeachment providing any allowance for the expenses of district judges while attending court outside their own districts during the year ending with the 30th day of June, 1897. The expenses referred to in the first article were for holding court within that period.

The PRESIDING OFFICER. The portion of the law indicated will be read by the Secretary.

The Secretary read as follows:

For pay of bailiffs and criers, not exceeding three bailiffs and one crier in each court, except in the southern district of New York: *Provided*, That all persons employed under section 715 of the Revised Statutes shall be deemed to be in actual attendance when they attend upon the order of the courts: *And provided further*, That no such person shall be employed during vacation; of reasonable expenses for travel and attendance of district judges directed to hold court outside of their districts, not to exceed \$10 per day each, to be paid on written certificates of the judges, and such payments shall be allowed the marshal in the settlement of his accounts with the United States; expenses of judges of the circuit courts of appeals; of meals and lodgings for jurors in United States cases, and of bailiffs in attendance upon the same when ordered by the court; and of compensation for jury commissioners, \$5 per day, not exceeding three days for any one term of court, \$110,000.

Mr. Manager OLMSTED. Mr. President, the offense charged in the second article occurred during the period of time covered by the sundry civil appropriation act of June 6, 1900, which was the law for the year ending June 30, 1901. The provision of law is, I think, identical with that previously read, and I will not ask to have it read, but that it be inserted in the Record.

The PRESIDING OFFICER. It will be inserted in the Record, if there be no objection.

Mr. Manager OLMSTED. I think the language is identical, except that the total amount appropriated is something larger.

The paragraph referred to is as follows:

Pay for bailiffs and criers, not exceeding three bailiffs and one crier in each court, except in the southern district of New York: *Provided*, That all persons employed under section seven hundred and fifteen of the Revised Statutes shall be deemed to be in actual attendance when they attend upon the order of the courts: *And provided further*, That no such person shall be employed during vacation; of reasonable expenses for travel and attendance of district judges directed to hold court outside of their districts, not to exceed ten dollars per day each, to be paid on written certificates of the judges, and such payments shall be allowed the marshal in the settlement of his accounts with the United States; expenses of judges of the circuit courts of appeals; of meals and lodgings for jurors in United States cases, and of bailiffs in attendance upon the same, when ordered by the court; and of compensation for jury commissioners, five dollars per day, not exceeding three days for any one term of court, one hundred and fifty thousand dollars.

Mr. Manager OLMSTED. The offense charged in the third article is fixed thereby within the time covered by the sundry civil appropriation act approved June 28, 1902, the same being an appropriation for the year ending June 30, 1903, and I offer a similar paragraph, found on page 476 of the Statutes at Large, which I have marked. The reading, I think, is not necessary, as the language is, I think, the same as in the former statutes, except as to the total appropriated by the paragraph for the various purpose stated therein.

The PRESIDING OFFICER. The marked portion will be included in the Record.

The paragraph referred to is as follows:

For pay of bailiffs and criers, not exceeding three bailiffs and one crier in each court, except in the southern district of New York: *Provided*, That all persons employed

under section seven hundred and fifteen of the Revised Statutes shall be deemed to be in actual attendance when they attend upon the order of the courts: *And provided further*, That no such person shall be employed during vacation; of reasonable expenses for travel and attendance of district judges directed to hold court outside of their districts, not to exceed ten dollars per day each, to be paid on written certificates of the judges, and such payments shall be allowed the marshal in the settlement of his accounts with the United States; expenses of judges of the circuit courts of appeals not to exceed ten dollars per day; of meals and lodgings for jurors in United States cases, and of bailiffs in attendance upon the same, when ordered by the court; and of compensation for jury commissioners, five dollars per day, not exceeding three days for any one term of court, one hundred and sixty thousand dollars.

Mr. Manager OLMSTED. I next offer in support of the second article of impeachment a duly authenticated copy of papers in the account of John Grant, United States marshal for the eastern district of Texas, showing the amount—\$310—paid by him to Charles Swayne for expenses of travel and attendance in holding court at Tyler, Tex.

I will say that all we care to cumber the record with is the single page containing the certificate of Judge Swayne as to the amount of his expenses and his receipt for the money. The Department has put in, to make it complete I suppose, some other matter which is of no use to anybody. It shows the accounts of the marshal for expenses of jurors, etc., not important here. If counsel upon the other side agree, it may, without prejudice to anybody, be omitted from the record.

Mr. THURSTON. Mr. President, while we maintain that this testimony is irrelevant and immaterial, we will not insist upon our objection to it at the present time. If this certificate is to go in, however, we wish it all to go in with the exception of the first certifying sheet, which is not necessary.

Mr. Manager OLMSTED. It all might as well go in, then. I offer the paper.

The PRESIDING OFFICER. Does the manager desire to have it read?

Mr. Manager OLMSTED. I will ask to have read only the page which I will indicate.

The PRESIDING OFFICER. But the whole of it is to be printed in the proceedings?

Mr. Manager OLMSTED. Yes; the whole, I assume, will be printed.

The Secretary read the part indicated by Mr. Manager Olmsted.

The PRESIDING OFFICER. The whole certificate will be printed in the Record.

The entire paper is as follows:

UNITED STATES OF AMERICA, TREASURY DEPARTMENT,
February 10, 1906.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed is a true copy of papers in the account of John Grant, United States marshal for the eastern district of Texas, now on file in this Department.

In witness whereof I have hereunto set my hand and caused the seal of the Treasury Department to be affixed, on the day and year first above written.

[SEAL.]

H. A. TAYLOR.
Assistant Secretary of the Treasury.

[Judicial, No. 7196. Certificate of expenses, United States courts. Marshals.]

TREASURY DEPARTMENT,
OFFICE OF AUDITOR FOR STATE AND OTHER DEPARTMENTS,
March 5, 1901.

I hereby certify that I have examined and settled an account between the United States and John Grant, United States marshal for the eastern district of Texas under

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the appropriation for "Pay for bailiffs, etc., United States courts," 1901, from July 1, 1900, to December 31, 1900, under bond dated March 2, 1898, and find a balance due the said United States of \$1,019.40.

ERNST G. TIMME,
Auditor for the State and other Departments,
By G. W. ESTERLY,
Deputy Auditor.

To the SECRETARY OF THE TREASURY.

(Division of Bookkeeping and Warrants.)

Statement.

DR.

To balance per certificate No. 69698	\$932. 40
To warrant 2783, dated January 2, 1901	1, 000. 00
Total	1, 932. 40

CR.

By amount of his disbursements	\$913. 00
By balance due the United States	1, 019. 40
Total	1, 932. 40

OFFICE OF THE SECRETARY OF THE TREASURY,
DIVISION OF BOOKKEEPING AND WARRANTS.

Entered in ledger No. 24, page 426, March 6, 1901.

H. M. G.

Abstract of disbursements under the appropriation for pay of bailiffs, etc., United States courts, 1901, for the quarter ending December 31, 1900.

Voucher No.	Items, etc.	Amount.
1	J. H. Fry, bailiff, October term, Jefferson	\$12
2	J. W. Sims, bailiff, October term, Jefferson	12
3	H. W. Walker, bailiff, October term, Jefferson	12
4	J. M. Singleton, crier, October term, Jefferson	12
5	Kate Wood, meals, jurors, October term, Jefferson	6
6	.....do.....	6
7	.....do.....	18
8	Ben Blum, jury commissioner, October term, Galveston	5
9	John Hackworth, bailiff, October term, Galveston	4
10	L. J. Donnelly, bailiff, October term, Galveston	4
11	.....do.....	8
12	John McMahon, bailiff, October term, Galveston	12
13	John M. Whelan, crier, October term, Galveston	4
14	.....do.....	8
15	.....do.....	20
16	G. O. Gremer, jury commissioner, November term, Paris	15
17	C. P. Matthews, bailiff, November term, Paris	16
18	A. A. Sims, bailiff, November term, Paris	16
19	F. H. Gaines, bailiff, November term, Paris	14
20	M. C. Smith, crier, November term, Paris	16
21	R. D. Simonton, jury commissioner, December term, Beaumont	10
22	Louis M. Hebert, bailiff, December term, Beaumont	12
23	E. A. Hayne, bailiff, December term, Beaumont	12
24	George A. Taylor, bailiff, December term, Beaumont	10
25	J. W. Wood, crier, December term, Beaumont	12
26	W. M. Reed, jury commissioner, special term, Tyler	15
27	L. O. Williams, meals, jurors, special term, Tyler	1
28	.....do.....	9
29	.....do.....	44
30	.....do.....	228
31	Chas. Swayne, expenses, judge, special term, Tyler	310
32	W. M. Reed, jury commissioner, January term, Tyler	10
33	J. W. Sims, jury commissioner, January term, Jefferson	15
	Total	908

[Form No. 28.]

UNITED STATES OF AMERICA,
Eastern District of Texas, ss:

I, Charles Swayne, district judge of the United States for the north district of Florida, do hereby certify that I was directed to and held court at the city of Tyler, in the eastern district of Texas, twenty-four days, commencing on the 3d day of December, 1900; also that the time engaged in holding said court and in going to and returning from the same was thirty-one days, and that my reasonable expenses for travel and attendance amounted to the sum of \$310, which sum is justly due me for such attendance and travel.

CHARLES SWAYNE, *Judge*.

DECEMBER 29, 1900.

Received of John Grant, United States marshal for the eastern district of Texas, the sum of \$310, in full of the above account.
\$310.]

CHARLES SWAYNE, *Judge*.

Paid by check drawn on Merchants and Planters' National Bank, Sherman, Tex., the designated depository of the United States, to wit:

December 10, 1900, No. 6829	\$100
December 21, 1900, No. 6847	100
December 29, 1900, No. 6857	110
	<hr/> 310

[Treasury Department. Auditor for the State and other Departments. Form No. 241. Ed. 11, 25, 1901-250.]

The United States in account current with John Grant, United States marshal for the eastern district of Texas, for pay of bailiffs, etc., of the United States courts during the period from October 1, 1900, to December 31, 1900.

Second account, 1901.

DR.

To disbursements, as per abstract herewith, paid 33 vouchers	\$908. 00
To balance due the United States	19. 40
	<hr/> 927. 40

CR.

By balance due the United States per last account for pay of bailiffs, etc., first account suppl.	\$927. 40
	<hr/> 927. 40

EASTERN DISTRICT OF TEXAS, ss:

John Grant, marshal of the United States for said district, being duly sworn, deposes and says that the services stated in the vouchers referred to in the above account have been actually and necessarily performed, and that the disbursements charged above have all been fully paid in lawful money.

JOHN GRANT, *Marshal*.

Sworn and subscribed to this 8th day of January, 1901, before me.

D. W. PARISH, *Clerk*.

EASTERN DISTRICT OF TEXAS, ss:

In the United States district court for said district, at a term thereof begun and held at Tyler, on the 8th day of January, 1901—present, the Hon. D. E. Bryant, judge—the following order was made and entered of record, to wit:

Whereas John Grant, United States marshal, has rendered to this court an account of his disbursements for pay of bailiffs, etc., incurred during the period from October 1, 1900, to December 31, 1900, of the United States courts, with the vouchers and items thereof, and in presence of M. C. McLemore, United States attorney, has proved, on oath, to the satisfaction of the court, that the services therein charged

have been actually and necessarily performed as therein stated, and that the disbursements charged have been fully paid in lawful money; and

Whereas said charges appear to be just and according to law: It is hereby *Ordered*, That the said account, amounting to nine hundred and eight dollars and no cents, be, and the same is hereby, approved.

The above is a true copy from the record of an order made by said court on the 8th day of January, 1901.

Witness my hand and the seal of said court this 8th day of January, 1901.

[SEAL.]

D. W. PARISH, *Clerk*.

Mr. Manager OLMSTED. Mr. President, I offer, in support of the third article of impeachment, a similar certificate showing Judge Swayne's certificate of expenses and his receipt for \$410 in relation to his holding court at Tyler, Tex., beginning in January, 1903.

Mr. THURSTON. Mr. President, repeating, as to this offer, what I said with respect to the other, we will waive insisting upon our objection to the introduction of this evidence.

Mr. Manager OLMSTED. I hardly see what objection the counsel upon the other side could make to it. It is certainly the most positive and direct and best evidence that could be offered directly in support of the third article of impeachment.

Mr. THURSTON. We have not objected to its incompetency. We have objected that it is irrelevant and immaterial to the article of the indictment.

Mr. Manager OLMSTED. I will ask to have the similar page read from this document and waive the reading of the remainder, understanding it will be printed in the Record.

The Secretary read the page indicated. The entire paper is as follows:

UNITED STATES OF AMERICA, TREASURY DEPARTMENT,
February 10, 1905.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed is a true copy of papers in the account of A. J. Houston, United States marshal for the eastern district of Texas, now on file in this Department.

In witness whereof I have hereunto set my hand and caused the seal of the Treasury Department to be affixed on the day and year first above written.

[SEAL.]

H. A. TAYLOR,
Assistant Secretary of the Treasury.

[Judicial, No. 93964. Certificate of expenses, United States courts. Marshals.]

TREASURY DEPARTMENT,
OFFICE OF AUDITOR FOR STATE AND OTHER DEPARTMENTS,
June 27, 1905.

I hereby certify that I have examined and settled an account between the United States and A. J. Houston, United States marshal for the district of Texas under the appropriation for "Pay of bailiffs, United States courts," 1903, from January 1, 1903, to March 31, 1903, under bond dated May 27, 1902, and find a balance due the said United States of \$736.75.

G. W. ESTERLY,
Acting Auditor for the State and other Departments.
W. O. B.

To the SECRETARY OF THE TREASURY,
(Division of Bookkeeping and Warrants).

SWAYNE IMPEACHMENT PROCEEDINGS IN THE SENATE. 89

Statement.

DR.	
To balance per certificate No. 91439.....	\$1,746.00
To warrant 5179, dated May 5, 1903.....	300.00
	<hr/> 2,046.00
CR.	
By amount of his disbursements.....	\$1,309.25
By balance due the United States.....	736.75
	<hr/> 2,046.00

OFFICE OF THE SECRETARY OF THE TREASURY,
DIVISION OF BOOKKEEPING AND WARRANTS.

Entered in Ledger No. 26, page 469, June 27, 1903.

H. M. G.

Abstract of disbursements under the appropriation for "Pay of bailiffs, United States courts," 1903, for the quarter ending March 31, 1903.

Voucher No.		Amount.
1	Judge Charles Swayne.....	\$410.00
2	James H. Seeton, jury commissioner.....	10.00
3	.....do.....	5.00
4	James McBride, bailiff.....	8.00
5	George W. Spencer, bailiff.....	44.00
6	Phil M. Wagner, bailiff.....	62.00
7	Geo. Powell, bailiff.....	30.00
8	J. W. Butler, crier.....	62.00
9	Mrs. E. G. Williams, board for jury.....	284.00
10	J. F. Moore, jr., M. D.....	7.50
11	Harris Brothers, druggists.....	1.60
	Total.....	<hr/> 874.10

UNITED STATES OF AMERICA, *Eastern District of Texas*, ss:

I, Charles Swayne, of the northern district of Florida, do hereby certify that I attended the special term, 1903, of the United States district court held at the city of Tyler, the same being a place other than where I reside, and that I attended said term thirty-six days, commencing on the 12th day of January, 1903, and also that the time engaged in attending said court and going to and coming from same was forty-one days, and that my reasonable expenses for travel and attendance amounted to the sum of four hundred ten dollars and no cents, which sum is justly due me for such expense of travel and attendance at said term of court.

CHAS. SWAYNE.

Dated February 16, 1903.

Received of A. J. Houston, United States marshal eastern district of Texas, the sum of four hundred ten and no /100 dollars, in full of the above account.
\$410.00.

CHAS. SWAYNE.

Paid by check No. 11335, January 17, 1903.....	\$50
Paid by check No. 11391, January 28, 1903.....	150
Paid by check No. 11514, February 14, 1903.....	200
Paid by check No. 11529, February 16, 1903.....	10
Total.....	<hr/> 410

90 SWAYNE IMPEACHMENT PROCEEDINGS IN THE SENATE.

TREASURY DEPARTMENT,
AUDITOR FOR THE STATE AND OTHER DEPARTMENTS.

The United States in account-current with A. J. Houston, United States marshal for the eastern district of Texas, for pay of bailiffs, etc., of the United States courts during the period from January 1 to March 31, 1903:

Dr.	
To disbursements:	
Paid Sherman court at A, voucher 1	\$99. 25
Paid Tyler court at B, voucher 2	874. 10
Paid Jefferson court at C, voucher 3	89. 00
Paid Paris court at D, voucher 4.....	262. 00
	<hr/>
	1, 324. 35
To balance due the United States.....	421. 65
	<hr/>
	1, 746. 00
Cr.	
By balance due the United States per last account for pay of bailiffs, etc ..	\$746. 00
By draft of the United States Treasurer, dated.....	1, 000. 00
	<hr/>
	1, 746. 00

EASTERN DISTRICT OF TEXAS, ss:

A. J. Houston, marshal of the United States for said district, being duly sworn, deposes and says that the services stated in the vouchers referred to in the above account have been actually and necessarily performed, and that the disbursements charged above have all been fully paid in lawful money.

A. J. HOUSTON, *Marshal.*

Sworn and subscribed to this 15th day of April, 1903, before me.

[SEAL]

A. O. BRACKETT,
United States District Clerk, Eastern District of Texas.
By H. H. HALEY,
Deputy at Beaumont.

EASTERN DISTRICT OF TEXAS, ss:

In the United States district court for the said district, at a term thereof begun and held at Beaumont on the 6th day of April, 1903—present, the Hon. D. E. Bryant, judge—the following was made and entered of record, to wit:

Whereas A. J. Houston, United States marshal, has rendered to this court an account of his disbursements for pay of bailiffs, etc., incurred during the period from January 1, 1903, to March 31, 1903, of the United States courts, with the vouchers and items thereof, and in the presence of H. B. Birmingham, assistant United States attorney, has proved, on oath, to the satisfaction of the court that the services therein charged have been actually and necessarily performed as therein stated, and that the disbursements charged have been fully paid in lawful money; and

Whereas said charges appear to be just and according to law, it is hereby

Ordered, That the said account, amounting to thirteen hundred twenty-four dollars and thirty-five cents, be, and the same is hereby, approved.

The above is a true copy from the record of an order made by said court on the 15th day of April, 1903.

Witness my hand and the seal of said court this 15th day of April, 1903.

[SEAL]

A. O. BRACKETT,
United States District Clerk, Eastern District of Texas.
By H. H. HALEY,
Deputy, at Beaumont.

Mr. Manager OLMSTED. Mr. President, I have had a similar certificate made covering the first article of impeachment, but in view of the fact that Judge Swayne's certificate of expenses and his receipt for the money are recited in the first article and are expressly admitted by the respondent in his answer I do not cumber the record with it. I call Payne W. Chase.

Mr. BAILEY. Mr. President, I may be mistaken as to the pleadings, but my understanding is that there is no issue as to the receipt and

expenditure as alleged by the House, and that at most, all that remains for the Senate to do is to determine the effect of the respondent having drawn the maximum allowance; and to determine, upon the state of the pleadings—it being alleged that he drew the money and did not expend it—what the law in that case is.

If I am right about that, I suggest that the calling of witnesses upon this charge, which involves the question of expense and receipt, would be a useless consumption of the time of the Senate. I do not venture to say positively that I am correct in my belief as to the state of the pleadings, but I am of the impression distinctly that while the House has charged the respondent with receiving \$10 a day and with expending a sum much less than that, the respondent does not deny the fact, but asserts as a matter of law that he had the right to do it. If permissible, which I believe it is not under the rule, to inquire of the managers or respondent, I would inquire directly of them; but having stated it to the Presiding Officer of the court, I am sure that counsel on each side will be able to answer.

Mr. Manager OLMSTED. Mr. President, with reference to the calling of the witness Payne W. Chase, who is called in support of the second article of impeachment, and all the witnesses who will be called in support of the first article and the third article, as well as the second, I desire to say that each of those articles charges two things—first, the making of a false certificate as to the actual amount of expenses paid or incurred in connection with the holding of the court—the expenses of travel and attendance; and second, the receipt, upon such false certificate, of the money thus certified. The certificates which have been offered show that the respondent certified in the respective cases to certain amounts as having been his expenses. These articles charge that his expenses were very much less in each of the three instances, and testimony will be adduced for the purpose of supporting the charge that the certificates were false in that respect.

Now, as to the pleadings, the respondent replies to the first article that he admits that he made the certificate and signed the receipt as therein set forth. That certificate, which is printed, commencing at page 1 of the little pamphlet which has been printed as Senate Document No. 183, says:

I, Charles Swayne, district judge of the United States for the northern district of Florida, do hereby certify that I was directed to and held court at the city of Waco, in the northern district of Texas, twenty-three days, commencing on the 20th day of April, 1897; also that the time engaged in holding said court, and in going to and returning from the same, was twenty-three days, and that my reasonable expenses for travel and attendance—

This is the part of the certificate to which I desire to call attention—and that my reasonable expenses for travel and attendance amounted to the sum of \$230 and — cents, which sum is justly due me for such attendance and travel.

Now, in answer to that the respondent admits that he made that certificate, and then he denies that in so doing he falsely certified, as charged in the articles of impeachment. That raises a distinct issue of fact upon which we desire to introduce proof.

If the respondent will concede that the certificate was false, and that the expenses actually incurred were very much less than \$230, the amount claimed by and paid to him as specified in the first article, and will make a similar acknowledgment and admission in regard to the offenses charged in the second and third articles of the impeachment—

if he will admit, for instance, that his expenses of travel and attendance incidental to the holding of court set forth in the third article did not exceed \$175, whereas he certified and charged \$410, then we shall be willing to dispense with the calling of proof. But until that is conceded submit that it is competent for us to introduce proof in support of the allegations in the articles so directly contained.

The PRESIDING OFFICER. A cursory examination of the pleadings leads the Presiding Officer to the conclusion that there is no direct admission in the answer of the respondent that the expenses were actually less than the sum charged, and it seems that evidence may be introduced to show that they were less.

Mr. Manager OLMSTED. We then call Mr. Payne W. Chase.

Mr. TELLER. Mr. President, in this part of the Chamber we have great difficulty in hearing either the Presiding Officer or the managers.

The PRESIDING OFFICER. The Presiding Officer will try to keep order.

Mr. TELLER. It is not entirely that. We are so far back here and there is so much noise generally that it is hard to prevent it. I think the managers should turn their faces a part of the time toward us in the rear.

Mr. Manager OLMSTED. If it will be permissible, in examining these witnesses I will stand in the aisle near the rear of the Chamber.

Mr. TELLER. I think that will be a good idea.

The PRESIDING OFFICER. There is no objection to the manager standing in that part of the Chamber.

PAYNE W. CHASE, sworn and examined.

By Mr. Manager OLMSTED:

Q. Mr. Chase, where do you reside?—A. In Tyler, Tex.

Q. Where?—A. Tyler, Tex.

Q. What is your occupation?—A. Hotel clerk.

Q. State what was your occupation in December, 1900.—A. I was clerk at the National Hotel at Tyler.

Q. If I understand you correctly, you say you were clerk in the National Hotel at Tyler?—A. Yes, sir.

Q. Do you know Judge Charles Swayne?—A. Yes, sir.

Q. State whether or not you saw him in December, 1900.—A. Yes, sir.

Q. State whether or not he was a guest at the National Hotel at which you were employed.—A. Yes, sir; he was a guest there.

Q. How long was he there? Between what dates, if you can state?—A. He was there from December 3 until the 29th.

Mr. DANIEL. The witness can not be heard.

The PRESIDING OFFICER. The witness is laboring under the disadvantage of having a severe cold. I have no doubt that he speaks as loudly as he can.

Mr. Manager OLMSTED. Mr. President, permit me to suggest that if the witness would stand in front of the Secretary's desk, he might be heard by more Senators than from the place where he now stands.

Mr. HEYBURN. I suggest that his testimony be repeated by some one whose voice is more distinct.

The WITNESS. I try to speak as loud as I can.

The witness advanced to the area in front of the Secretary's desk.

Q. (By Mr. Manager OLMSTED.) If I correctly understand your testimony, you have thus far stated that in the year 1900, and particularly in December of that year, you were the hotel clerk of the National Hotel, at Tyler, Tex. Have I correctly heard you?—A. Yes, sir.

Q. Do you know Judge Swayne?—A. Yes, sir.

Q. Did he stop at that hotel in the latter part of 1900?—A. Yes, sir.

Q. At what period, if you can tell; between what dates?—A. December 3 to 29.

Q. From December 3 to December 29, 1900?—A. Yes, sir.

Q. Is the National Hotel the best hotel in that town?—A. Yes, sir. [Laughter.]

The PRESIDING OFFICER. The Presiding Officer must remark that order must be preserved.

Q. (By Mr. Manager OLMSTED.) State, if you know, the charges which were made to Judge Swayne during that period of which you have testified.—A. Yes, sir; I have a memorandum in my hand and I can give it.

Q. If you can state it from your knowledge or by refreshing your memory, please give us the fact.—A. From dinner, 3d of December, 1900, until after supper of the 29th—twenty-six and one-quarter days. It amounted to \$52.50 for his board.

Q. He was there twenty-six and one-quarter days. Is that your answer?—A. Yes, sir.

Q. His total bill was how much?—A. His total bill was \$58.35—\$52.50 for board and \$5.85 for extras, laundry, and drug bill.

Mr. THURSTON. What was the total?

The WITNESS. \$58.35.

Q. (By Mr. Manager OLMSTED.) What was the charge per day for board and lodging?—A. \$2 per day.

Q. Is that the regular rate of that hotel, or was it the rate at that time?—A. The regular rate; yes, sir. Our regular rate is \$2.50 a day. This was the weekly rate, \$2 a day. We charged him \$2 per day.

Q. Your regular rate by the day, then, is \$2.50?—A. That is our rate now. It was \$2 a day.

Q. When persons stay more than a week you charge them \$2?—A. Two dollars.

Q. And that was the total amount paid by Judge Swayne?—A. Yes, sir.

Q. Adding thereto the extras, the laundry, and what was the other item?—A. Drug bill.

Q. Laundry and drug bill?—A. And drug bill.

Q. That was the total charge made against him by the hotel at that time?—A. Yes, sir; \$58.35.

Mr. Manager OLMSTED. That is all.

The PRESIDING OFFICER. Have the counsel for respondent any questions to ask the witness?

Mr. THURSTON. We have no cross-examination.

Mr. Manager OLMSTED. I now call Mrs. Downs.

Mrs. SUSAN L. DOWNS sworn and examined.

The PRESIDING OFFICER. If the witness can be readily heard, I think the Secretary's desk at the right is the place for the witness to stand.

By Mr. Manager OLMSTED:

Q. Mrs. Downs, where do you reside?—A. Waco, Tex.

Q. What is your occupation?—A. I keep a boarding house.

Q. How long have you been keeping a boarding house, Mrs. Downs?—A. Eighteen years.

Q. Do you know Judge Charles Swayne?—A. I do.

Q. Has he stopped at your boarding house?—A. He has.

Q. Will you state whether or not he stopped with you in the month of April, 1897?—A. I think so.

Q. Can you state, Mrs. Downs, what rate you charged him while he was with you?—A. It is forty or forty-five a month.

Q. Either \$40 or \$45 a month?—A. Yes.

Q. Not to exceed \$45 a month?—A. No; I am sure.

Q. I will ask you one question more, Mrs. Downs. When he stopped with you, was he there with you during the entire term of the court which he was then holding, if you know?—A. Possibly he was out of town once, it may be a day at a time; I am not sure.

Mr. Manager OLMSTED. That is all.

Mr. DANIEL. I wish to ask the witness a question.

The PRESIDING OFFICER. The rule is that when a Senator desires to ask a question it shall be reduced to writing.

The paper was passed to the Presiding Officer.

The PRESIDING OFFICER. Senator Daniel desires this question to be put to the witness:

What did your bill include? I mean what was the charge for; board and lodging, or other items?

The WITNESS. Everything included; board and lodging.

The PRESIDING OFFICER. How about other items?

The WITNESS. No other items.

The PRESIDING OFFICER. Do counsel for the respondent desire to cross-examine the witness?

Mr. THURSTON. We have no questions to ask.

Mr. HIGGINS. No questions, Mr. President.

Mr. Manager OLMSTED. I now call W. B. Sublett.

The Sergeant-at-Arms reported that Mr. Sublett was not present.

Mr. Manager OLMSTED. Mr. President, the witnesses whom we desired to examine this evening appear to have been delayed by the storm. We are told that they will be here, and they may be even now arriving in the city. We can not well proceed in their absence.

The PRESIDING OFFICER. The Presiding Officer understands, then, that the managers have nothing further to present?

Mr. Manager PALMER. Nothing to-day.

Mr. Manager OLMSTED. Nothing further in the absence of the witnesses.

Mr. HIGGINS. Mr. President, I learn from the Sergeant-at-Arms that a witness for the respondent, Louis P. Paquet, of New Orleans, has been served, and that he is not in attendance, and we would ask for an attachment. The Sergeant-at-Arms has informed me that his deputy instructs him that Mr. Paquet claimed to be suffering from the grippe, and would send a certificate of a physician. We are not content with that state of the record as furnishing a reason why we should not ask for an attachment.

The PRESIDING OFFICER. The rules require that a motion for an attachment shall be decided by the Senate rather than by the Presiding

Officer. The Presiding Officer, however, will suggest that the motion being now made, a decision upon it can be delayed for a little time. There may be some further information. So it is not necessary to submit the question at this time to the Senate, unless it be desired.

Mr. FAIRBANKS (at 3 o'clock and 38 minutes p. m.). Mr. President, I move that the Senate, sitting as a court of impeachment, adjourn to to meet at 2 o'clock to-morrow.

The motion was agreed to; and the Senate, sitting for the trial of the impeachment, adjourned until February 11.

The managers on the part of the House, the respondent, and the counsel for the respondent, retired from the Chamber.

IN THE SENATE, *February 11, 1905.*

The hour of 2 o'clock having arrived, Mr. Platt, of Connecticut, assumed the chair.

The PRESIDING OFFICER (Mr. PLATT, of Connecticut). The hour of 2 o'clock having arrived, the Senate is in session for the trial of the impeachment of Charles Swayne, United States judge in and for the northern district of Florida. The Sergeant-at-Arms will make proclamation.

The Sergeant-at-Arms made the usual proclamation.

The managers of the impeachment on the part of the House of Representatives appeared and were conducted to the seats assigned them.

The respondent, Judge Charles Swayne, accompanied by his counsel, Mr. Higgins and Mr. Thurston, entered the Chamber and took the seats provided for them.

The PRESIDING OFFICER. The Journal of the last session of the Senate sitting in the impeachment trial will be read.

The Secretary read the Journal of the proceedings of the Senate sitting as a court on Friday, February 10.

The PRESIDING OFFICER. At the last session a motion was made that attachment issue for witness J. H. Durkee, of Jacksonville, Fla. That question, under the impeachment rules of the Senate, must be decided by the Senate itself and not by the Presiding Officer. But the Presiding Officer suggested yesterday that the decision of that motion might be delayed and the witness be communicated with. Accordingly, the Sergeant-at-Arms sent the following telegram.

The Secretary read as follows:

[Telegram.]

FEBRUARY 10, 1905.

J. H. DURKEE, *Jacksonville, Fla.:*

A motion for your attachment has been made, the decision of which is delayed in the expectation that you will attend without further delay. Wire answer.

D. M. RANDELL,
Sergeant-at-Arms United States Senate.

The PRESIDING OFFICER. To this telegram the following reply was received.

The Secretary read as follows:

[Telegram.]

JACKSONVILLE, FLA., February 11, 1905.

HON. D. M. RANDELL,
Sergeant-at-Arms, United States Senate, Washington, D. C.:

I can not travel without attendance of a physician. If you can authorize me to employ a physician to accompany me, will start without delay. Answer.

JOSEPH H. DURKEE.

The PRESIDING OFFICER. To that telegram the following was sent for reply.

The Secretary read as follows:

[Telegram.]

FEBRUARY 11, 1905.

JOSEPH H. DURKEE,
Jacksonville, Fla.:

Your son, Doctor Durkee, has been, or will be, summoned. Start with him immediately. Answer.

D. M. RANDELL,
Sergeant-at-Arms, United States Senate.

The PRESIDING OFFICER. The last-mentioned telegram was sent this morning and no answer has been received.

With regard to the witness for whom an attachment was asked by the respondent, Louis P. Paquet, of New Orleans, the following telegram was sent to him.

The Secretary read as follows:

[Telegram.]

FEBRUARY 10, 1905.

LOUIS P. PAQUET,
2420 Ursuline avenue, New Orleans, La.:

Motion for an attachment made because of your failure to appear. Wire at once whether you are coming.

D. M. RANDELL,
Sergeant-at-Arms, United States Senate.

The PRESIDING OFFICER. After that telegram was sent I received a letter written by Mrs. Paquet, inclosing a physician's certificate. The letter and the certificate will be read.

The Secretary read as follows:

NEW ORLEANS, LA., February 8, 1905.

HON. O. H. PLATT, *Washington, D. C.*

DEAR SIR: The subpoena sent to the Hon. L. P. Paquet, of this city, was received this afternoon. My husband has been seriously ill since January 31, and it is only to-day that we can safely say that he is mending slowly. The doctor states that it will be three or four weeks before he will be able to get out. I herewith hand you the attending physician's certificate, which speaks for itself.

I am, very respectfully,

MRS. L. P. PAQUET, *2420 Ursuline avenue.*

NEW ORLEANS, February 8, 1905.

To whom it may concern:

This is to certify that Judge Louis P. Paquet has been ill since January 31, 1905, and confined to bed. While he is steadily improving, it will be three or four weeks [before he can] be considered cured.

He is therefore unable to leave his bed or room.

A. MAESTRI, M. D.,
Attending Physician.

The PRESIDING OFFICER. In reply to the telegram which was sent by the Sergeant-at-Arms the following telegram from Mrs. Paquet has been received:

The Secretary read as follows:

[Telegram.]

NEW ORLEANS, LA., February 10, 1905.

Hon. O. H. PLATT,
United States Senate, Washington, D. C.:

On 8th instant I wrote you a letter inclosing physician's certificate which stated that Judge Paquet had been ill abed since January 31 and was still in the same condition, and therefore will be physically impossible for him to go to Washington.

Mrs. L. P. PAQUET.

The PRESIDING OFFICER. The Presiding Officer desires to inquire whether there is further application for an attachment for either of these witnesses? It is probable, I think, that Mr. Durkee will start for Washington.

Mr. Manager PALMER. We are not asking now for an attachment for Mr. Durkee. We shall wait until another meeting, at least, before we ask it. If he does not come, we will ask it then.

Mr. HIGGINS. I suggest to the court that the matter of the application for the attachment of Paquet be postponed until the end of the session to-day.

The PRESIDING OFFICER. Such order will be taken, if there be no objection. Are the managers ready to proceed?

Mr. Manager PALMER. Mr. President, Mr. B. S. Liddon was counsel for the plaintiffs in this case and appeared before the Judiciary Committee in the taking of the testimony. He is familiar with the witnesses and with all the facts of the case, and the managers desire that he shall be allowed to be in the Senate Chamber while this trial is proceeding so that they may have the advantage of his presence and his counsel.

The PRESIDING OFFICER. What is the name?

Mr. Manager PALMER. B. S. Liddon—Judge Liddon. Of course, Mr. President, we are not asking that he shall appear as counsel. We only want him here so that we can consult with him with respect to the witnesses if we need him, so as to expedite the business and facilitate the progress of the trial.

The PRESIDING OFFICER. Unless objection is made on the part of the Senate, the Presiding Officer will grant the request. If any Senator objects, the Presiding Officer will be glad to hear what may be said on the subject. The request is granted. The managers will proceed with witnesses.

Mr. Manager OLMSTED. Mr. President, the witness whom we had intended calling at this time in support of the third article of impeachment is a lady, who feels very nervous about undergoing the ordeal of appearing before so august a tribunal, and much pressure has been made upon counsel for the respondent, as well as upon the managers. So we have, with that gallantry common to both sides, entered into an arrangement which will dispense with her attendance. I think the managers would much prefer that she be here in person, but we have agreed that the following deposition or statement, questions and answers, submitted to and made by her, shall, with the permission of

the President and of the Senate, be treated with like effect as if the witness were present and had testified to the same before the Senate.

Mr. HIGGINS. We have no objection.

Mr. Manager OLMSTED. We ask that the paper may be read.

The PRESIDING OFFICER. The Chair has no doubt that the managers and counsel may stipulate to that effect. The statement referred to will be read.

The Secretary read as follows:

Mrs. ANNIE E. RUSSELL, having been duly sworn, testified as follows:

Direct examination by Mr. Manager OLMSTED:

Q. Where do you live?—A. Tyler, Tex.

Q. How long have you been there?—A. About twenty-two years.

Q. You are engaged in running a hotel, or have been, or a boarding house there?—A. No, sir.

Q. Have not at all?—A. No, sir; we just had a very large house, and during this court Mr. Butler came and asked me if I would take some of the judges and lawyers, and I told him I would. We had a large house and were renting the rooms. I had only been there about two years.

Q. That was at Tyler?—A. Yes, sir.

Q. Did Judge Swayne ever board with you there?—A. Yes, sir.

Q. Do you know the date?—A. No, sir; I did not make any memorandum of it, but it was during that trial of the bank there.

Q. In the United States court room?—A. Yes, sir.

Q. Do you know in what year it was?—A. It was last year.

Q. 1903?—A. Yes, sir.

Q. Do you know what part of the year—the early part or the latter part?—A. It was January, as well I can recollect.

Q. Do you know how long he stayed with you?—A. From the beginning until the end. I did not keep any memorandum of it at all. He was there from the time the court opened until it closed.

Q. You do not know how long? Could not approximate the time?—A. I think it was about six weeks or more; I am not sure about that.

Q. Do you know what rate of board he paid you?—A. Yes, sir; \$1.25 a day.

Q. Did that include lodging?—A. Yes, sir.

Q. That included table board and lodging?—A. Yes, sir; everything.

Q. One dollar and twenty-five cents a day?—A. Yes, sir.

Q. In the early part of the year 1903 he was there from four to six weeks?—A. He was there during the whole term of court. I find that it was from the morning of the 12th of January, 1903, to February 16, 1903; about thirty-five days.

Q. How far is your house from the court-house—the place where Judge Swayne held court?—A. Less than the length of a block. Not over a minute's walk.

Q. In going from your house to court and returning to your house from court, did Judge Swayne ride or walk?—A. He always walked.

Mr. Manager OLMSTED. Mr. President, the witnesses whom we had expected to examine to-day in further support of the first three articles of impeachment, and also the fourth and fifth articles, have not yet reached Washington. We shall, therefore, have to proceed with

testimony in support of the sixth and seventh articles, relating to the subject of the residence of the respondent within the district for which he was appointed; and under the arrangement made and between the managers in regard to the matter, the witnesses upon that point will be examined by Mr. Manager Perkins.

Mr. Manager PERKINS. Mr. President, I will, if it would be more convenient for Senators, stand farther back from the witness, with the result of compelling the witness to speak somewhat more distinctly than if I stand down here. I am subject to the court, of course, and will, if that be satisfactory, examine the witnesses here, or I will take a place farther back, as Senators may prefer.

The PRESIDING OFFICER. Unless there be some reason to the contrary, the Presiding Officer thinks the witness should stand at his right here, and can be examined by the manager from any point he may choose to occupy.

Mr. Manager PERKINS. Very well, sir.

The PRESIDING OFFICER. What witness do the managers desire called first?

Mr. Manager PERKINS. The first witness we desire to call is Mr. A. H. D'Alemberte.

A. H. D'ALEMBERTE, sworn and examined.

Mr. Manager PERKINS. Mr. President, I will first take the liberty of reading from the articles of impeachment what is contained in two sentences, the wording of the statute which it is claimed under the sixth and seventh articles the respondent has violated. It reads:

A district judge shall be appointed for each district, except in cases hereinafter provided. Every judge shall reside in the district for which he is appointed, and for offending against this provision shall be deemed guilty of a high misdemeanor.

By Mr. Manager PERKINS:

Q. Where do you live?—A. Pensacola, Fla.

Q. How long have you lived there?—A. About thirty-five years.

Q. Have you held any official position there?—A. Yes, sir; that of tax collector for Escambia County.

Q. Is Pensacola included in Escambia County?—A. It is the county seat.

Q. It is the county seat, and is a part of that county?—A. Yes, sir.

Q. Have you been tax collector for the entire county?—A. Yes, sir.

Q. Were you such tax collector from 1890 to 1903?—A. I was.

Q. During that entire period?—A. Yes, sir.

Q. And as such tax collector you have on the rolls the names of all the persons whose taxes were collected in that county?—A. I do.

Q. And collect taxes from all persons whose names were found on those rolls?—A. All whom I could legally collect from.

Q. On those rolls were contained the names of persons assessed for poll taxes?—A. Yes, sir.

Q. How are the names of persons assessed for poll taxes in the State of Florida ascertained? How is the roll made up?—A. It is made up from the registration books so far as the assessor can obtain the correct names, and then he obtains other names which are not on the registration books.

Q. What names are contained on the registration books?—A. The names of registered voters.

Q. All those who appear to qualify and register as voters have their names put on the registration books?—A. Well, it does not necessarily follow if names are on the registration books that they are qualified electors.

Q. But unless they are on the registration books they are not electors?—A. No, sir.

Q. Can anyone vote in the State of Florida who does not pay a poll tax?

Mr. HIGGINS. Is not that a matter of law?

Mr. Manager PERKINS. Oh, we can prove the statutes if necessary. But there is no question about it. It is to save time that we ask the witness.

The PRESIDING OFFICER. The Presiding Officer will suggest to the managers and the counsel that the object of this trial is to get at the facts, and he hopes that there will be as little technicality with regard to the matter of examination of the witnesses as is possible.

Mr. Manager PALMER. That is our endeavor, Mr. President.

Mr. Manager PERKINS (to witness). You may answer the question, witness.

The WITNESS. I will, if you will just repeat the question.

Q. (by Mr. Manager PERKINS). Can anyone vote in the State of Florida who does not pay a poll tax?—A. Yes, sir; he votes if under 21 when he registers, or if he is under 21 when the assessments of poll taxes are made for that particular year, or if he has moved into the county or State and has not been a legal resident sufficiently long to pay a poll tax.

Q. How long a time is that?—A. He must be in the State twelve months and six months in the county in order to register, and must be a resident of the county on the 1st day of January to be liable to a poll tax for that year; and he who is over 55 years of age on the 1st day of January of the year for which the poll tax is levied is exempt.

Q. In reference to those who are thus exempt, is it necessary that they should have a certificate of registration in order to be allowed to vote?—A. The law provides that they should obtain such certificate from the supervisor of registration.

Q. Showing that they are exempt under the provisions of the law? They must register before they vote?—A. Yes, sir.

Q. You collect the taxes also on any assessment against personal property in the county for which you are the collector?—A. The poll tax and the taxes on real estate and personal property.

Q. The poll tax, personal property, and real estate?—A. Yes, sir.

Q. You may state whether from 1894 to 1902 any tax was assessed against or collected from Charles Swayne.—A. No, sir; not in his name.

Q. Did his name appear on the rolls?—A. No, sir.

Q. When did you first collect any tax in that county from Charles Swayne?—A. On the 2d day of April, 1902.

Q. What tax was that?—A. A tax on real estate—on unimproved real estate.

Q. On vacant lots?—A. Twenty vacant lots in a solid square, known as Square 240.

Q. Where?—A. In the city of Pensacola, Fla.

Q. In whose name was that property assessed?—A. Benjamin Hilton, of East Orange, N. J.

Q. But the tax was paid to you by Charles Swayne?—A. Yes, sir.
 Q. Was the assessment on that real estate subsequently changed?—
 A. It was.
 Q. To whose name?—A. L. C. Swayne.
 Q. When was that done?—A. The succeeding year.
 Q. Then, at any time during the period of which you speak has Charles Swayne been a taxpayer of that county?—A. No, sir.
 Q. At any time from 1900 to 1903 has he been entitled to vote in the county?—A. I believe not, sir.
 Mr. Manager PERKINS. I think that is all.

Cross-examined by Mr. HIGGINS:

Q. What is your full name?—A. Arthur H. D'Alemberte.
 Q. Then you are not the W. A. D'Alemberte who is summoned here as a witness?—A. No, sir; that is my brother.
 Mr. SPOONER. Mr. President, I should like to submit to the President a request that the counsel speak a little louder.
 Q. (By Mr. HIGGINS.) Do all the citizens of your jurisdiction who are entitled to register always register?
 The WITNESS. Do all the citizens of my jurisdiction entitled to register always register?
 Mr. HIGGINS. Yes, sir.
 A. I think not, sir.
 Q. Who was the L. C. Swayne to whose name this property was transferred? A. I think it was Lydia C. Swayne.
 Q. Do you know who she was?—A. I do not, sir. I presume she was Judge Swayne's wife.
 Q. Judge Swayne paid the tax for Lydia C. Swayne?—A. He did.
 Q. Is it still on your tax book?
 The WITNESS. That piece of property?
 Mr. HIGGINS. Yes, sir.
 A. Yes, sir.
 Q. Assessed to Lydia C. Swayne?—A. Yes, sir.
 Q. The taxes been kept up and paid?—A. Yes, sir.
 Q. Is there any other property assessed to Mrs. Swayne besides that?—A. I think there is a piece of property, about two lots, or three lots and a half, or, maybe, four lots, in block 11, Belmont tract, city of Pensacola.
 Q. Unimproved property?—A. No, sir; it is improved property.
 Q. What is it?—A. A residence.
 Q. Do you know whose residence it is?—A. It is assessed in the name of L. C. Swayne for 1904, which is the first year it has been assessed in that name.
 Q. Before that in whose name was it assessed?—A. Judge A. C. Blount, jr.
 Q. Had it been in Judge Blount's name long?—A. A good many years.

Mr. HIGGINS. That is all.

Mr. CULBERSON. Mr. President, I desire to submit a question.

Mr. Manager PERKINS. I would state that there are one or two other questions that I desire to ask after the Senator's question has been asked.

The PRESIDING OFFICER. The Senator from Texas desires the question to be submitted to the witness which will be read by the Secretary.

Mr. CULBERSON. My question may be withheld until the manager is through.

Mr. Manager PERKINS. Very well.

Q. (By Mr. Manager PERKINS.) Mr. D'Alemberte, when do you say this property was first assessed in the name of Mrs. L. C. Swayne—the house and lot?—A. 1904, sir, is the first year it appears on the tax book in L. C. Swayne's name.

Q. During all these years that you have been collector you have yourself been present in Pensacola?

The WITNESS. Been present in Pensacola?

Mr. Manager PERKINS. All of the time, or substantially all of the time?

A. With the exception of a week or ten days' absence; yes, sir.

Q. Do you know Judge Swayne by sight?—A. Yes, sir.

Q. Did you ever see him there except during a term of the United States court?—A. I did not.

Q. You did not, except during the terms of the United States court. During that time did you know of any residence that Judge Swayne had in Pensacola?—A. None that I know of, sir.

Q. None that you know of. Were you well acquainted with most of the people of the city?—A. Yes, sir.

Q. You had occasion to be in all parts of the city?—A. Yes, sir.

Q. You knew of his being at hotels or boarding houses during the presence of the court.

Mr. HIGGINS. Mr. President, I would request that the manager do not lead his witness. It is perfectly easy to avoid it.

Mr. Manager PERKINS. I have no desire, Mr. President, to lead the witness. I am merely calling his attention to what he has once before testified.

Q. (By Mr. Manager PERKINS.) You may state whether or not you did know that during the terms of the court Judge Swayne stayed there at hotels or boarding houses in Pensacola.—A. Yes, sir.

Mr. Manager PERKINS. That is all. I yield to the Senator.

Mr. HIGGINS. There is a question to be read, I believe.

The PRESIDING OFFICER. The Secretary will read the question propounded by the Senator from Texas [Mr. Culberson].

The Secretary read as follows:

Q. Do you know whether the respondent ever actually voted since he has been judge? And if so, state where and when did he vote.

The WITNESS. Not in my county, sir.

Mr. BACON. Mr. President, I have a question which I desire to have propounded to the witness.

The PRESIDING OFFICER. The Secretary will read the question.

The Secretary read as follows:

Q. Does the law of Florida require the payment of a poll tax from each male citizen of the State who is over 21 and under 55 years of age?

The WITNESS. Before he can vote? Yes, sir; it requires him to pay it.

Mr. BACON. I will amend that question in order to leave no doubt as to what I mean.

Mr. HOPKINS. While the Senator is amending his question, I desire to present a question.

Mr. BACON. Mr. President, I have amended the question and enlarged it a little, so as to cover all I meant.

The PRESIDING OFFICER. The Secretary will now read to the witness the question of the Senator from Georgia [Mr. Bacon] as amended.

The Secretary read as follows:

Q. Does the law of Florida require the payment of a poll tax from each male citizen of the State who is over 21 and under 55 years of age, without reference to the question whether or not he votes?

The WITNESS. It does; yes, sir.

Mr. Manager PERKINS. What is the witness's answer?

Mr. Manager CLAYTON and Mr. Manager SMITH. The answer is "yes."

The PRESIDING OFFICER. Does the manager desire the question read again?

Mr. Manager PERKINS. No, sir.

The PRESIDING OFFICER. The Senator from Illinois [Mr. Hopkins] propounds a question, which will be read by the Secretary.

Mr. SPOONER. I ask that the answer of the witness to the last question may be again read.

Mr. Manager OLMSTED. Mr. President, if permissible, I would ask that both question and answer be read.

Mr. SPOONER. I ask that the answer be read.

The PRESIDING OFFICER. The Reporter will read the answer to the question propounded by the Senator from Georgia [Mr. Bacon].

The Reporter read the answer, as follows:

A. It does; yes, sir.

Mr. SPOONER. Mr. President, does the manager wish the question also to be read?

Mr. Manager OLMSTED. I should like to ask that the question be again read. It was a little indefinite, as the clerk's back was toward us when it was read.

The Secretary again read the question of Mr. Bacon, as follows:

Q. Does the law of Florida require the payment of a poll tax from each male citizen of the State who is over 21 and under 55 years of age, without reference to the question whether or not he votes?

The PRESIDING OFFICER. The answer of the witness is: "It does; yes, sir." The Senator from Illinois [Mr. Hopkins] propounds a question, which will be read by the Secretary.

The Secretary read as follows:

Q. Can not a man be a citizen of the county without being a taxpayer?

Mr. HOPKINS. Instead of "citizen" it should read "resident."

Mr. Manager PALMER. Well, Mr. President, we do not want to be captious; but, in the opinion of the managers, that is a question of law, not of fact. I suppose we have a right to object to a question by a Senator, under the rule, and we object to that question. It is a matter of law, and I do not suppose the witness is a lawyer.

The PRESIDING OFFICER. If the objection is insisted upon, the Presiding Officer thinks that the question is improper, for the reason that it relates to a matter of law; but the Presiding Officer would suggest that this examination has so far proceeded upon questions of law very largely.

Mr. HIGGINS. Exactly.

Mr. LODGE. Was the decision of the Chair that the question might be answered?

The PRESIDING OFFICER. The Presiding Officer thinks the objection must be sustained; but he took occasion to remark that the examination had already proceeded very far with the witness as to what the law was in Florida.

Mr. LODGE. Mr. President, I should like now to ask for a ruling on what seems to me a very important matter. Are the managers for the House and counsel for the respondent entitled to object and shut out questions asked by the judges—Senators?

The PRESIDING OFFICER. Perhaps not in the technical way in which objections are made in court, but the Presiding Officer thinks that either the managers on the part of the House or the counsel for the respondent have a right to raise the question, to be decided by the Presiding Officer, as to whether evidence is admissible.

Mr. LODGE. Whether a question asked by a Senator is competent? My only purpose, Mr. President, is to know under what limitations we are acting.

The PRESIDING OFFICER. The Presiding Officer does not at this time desire to make any binding or irreversible rule, but if such a case can be supposed as that a Senator should put an improper or inadmissible question to a witness, the Presiding Officer thinks that, that question being raised, he would have a right to rule upon it.

Mr. HOPKINS. Mr. President, on the question raised by the managers I desire to be heard for a moment. The question of residence is a question of fact. It is not a question of law.

Mr. Manager PALMER. In order to settle the difficulty, we withdraw the objection.

The PRESIDING OFFICER. The objection is withdrawn, and the witness will answer the question, which will again be read.

The Secretary read as follows:

Can not a man be a resident of the county without being a taxpayer?

The WITNESS. Yes, sir.

Mr. BACON. I have another question which I desire to propound to the witness.

The PRESIDING OFFICER. The Secretary will read the question submitted by the Senator from Georgia.

The Secretary read as follows:

Has the respondent ever paid a poll tax in the county of Escambia since the witness has been the tax collector of the county?

The WITNESS. He has not. I should like to correct the answer to the question preceding this.

The PRESIDING OFFICER. The Secretary will again read the question of the Senator from Illinois.

The Secretary read as follows:

Can not a man be a resident of the county without being a taxpayer?

The WITNESS. If he is there on the 1st day of January the poll tax is assessed against him, and under the rule the collector is supposed to collect it.

I should like to have that answer take the place of the other answer.

Reexamined by Mr. Manager PERKINS:

Q. I ask the witness if Judge Swayne, to his knowledge, was in 1900 to 1903 a resident of the county of which he was a collector and in which Pensacola is situated?

Mr. HIGGINS. We think that is an improper question.

Mr. Manager PERKINS. The question is precisely similar in character to the question which was put by the Senator from Illinois [Mr. Hopkins] and which the witness was allowed to answer. I ask him a question of fact.

The PRESIDING OFFICER. Will the manager repeat the question?

Mr. Manager PERKINS. I ask that the reporter read the question.

The reporter read as follows:

Reexamined by Mr. Manager PERKINS:

Q. I ask the witness if Judge Swayne, to his knowledge, was in 1900 to 1903 a resident of the county of which he was collector and in which Pensacola is situated.

The PRESIDING OFFICER. What is the objection?

Mr. HIGGINS. It is a question of law. We have no objection to the witness stating, but every desire to have him state, every fact he knows about the movements or the residence of Judge Swayne, or where he actually or bodily was, but to ask a mere conclusion of law is, we think, improper.

Mr. Manager PERKINS. This question is precisely similar in character to the question asked by the Senator from Illinois [Mr. Hopkins] and answered, in which the witness was asked to state whether a man could be a resident under certain circumstances; and the Senator from Illinois truly remarked that the question of residence is a question of fact. It is precisely analogous to asking him whether to his knowledge a certain man was a resident of a certain place. I can see no distinction between the questions, nor does my learned friend on the other side see any difference.

Mr. HIGGINS. Oh, yes. It is competent for the learned manager to ask the witness where the respondent stayed, where he lived, what house he occupied, anything about his actual movements out of which the question of residence would be established. Residence is a question both of fact and of law, and it is as to that mixed question and as to the legal result from it that the learned manager has asked a comprehensive question. It is a question to be asked of the court and for the court in the end to decide.

Mr. Manager PERKINS. Yes, Mr. President; but allow me to suggest that what the managers have to prove in this case is a negative. We are not to prove as a matter of fact that the respondent was a resident. We have to prove that he was not a resident. How can a negative be proved except by proving as best we can from those who live there the fact that the alleged resident was not there. We do not prove affirmative acts. We prove negative acts. Not what he did, not that he was there, but that he was not there. How otherwise can a negative ever be proved than by negative facts?

The PRESIDING OFFICER. The question is, Was the respondent, to the witness' knowledge, a resident of Pensacola? The witness may answer the question.

The WITNESS. To my knowledge, he was not.

Q. (By Mr. Manager PERKINS.) Was Judge Swayne a resident of Pensacola during that time?—A. So far as I know—

Mr. THURSTON. Wait a moment.

Mr. President, we object to the question. We agree with the managers that they are required to prove a negative, but the only way in which they can prove that Judge Swayne was not a resident of that district is to follow him as far as they can, and they can follow him every day of every year and show where he was, show where his family was, show how much of the time he was in the district, how much of it out of the district, whether he lived there, where he lived there, where he lived elsewhere, and what his movements were all the time; and it is for the Senate as a court to answer the question when the facts are shown as to whether or not he was a resident of the district.

Mr. Manager PERKINS. Mr. President, with great respect to my learned adversary, while doubtless it is for the Senate to say whether or not he was a resident, the evidence we offer is entirely competent. It is for the Senate to pass upon its weight. If we seek to show that a man is not a resident of the city of Washington, we are not obliged to follow him to the North Pole or the South Pole. It is enough for us to show that he has not been in the city of Washington. That proves our case. He can show where he was, and the court will give to it such weight as it may attach. We do not have to show where he was, except that he was not in the place where we allege he was a nonresident. That surely is evidence and competent evidence, Mr. President, and the weight of it is to be passed upon by the court as is true of all competent evidence.

Mr. THURSTON. Mr. President, we are not objecting to their asking this witness whether or not in any particular year, month, week, or day Judge Swayne was in Pensacola. That would be a proper question. It would ask for a fact. But they are asking for a conclusion which can only result from the consideration of many facts related to the law.

The PRESIDING OFFICER. The witness is asked really for his opinion whether Judge Swayne was a resident at a certain place. If this witness can be so asked, any number of witnesses can be asked the question, and the decision of it would then depend upon the opinion of witnesses.

The question of residence is one of mixed law and fact, and must be determined, as the Presiding Officer thinks, by the Senate upon the proved circumstances and facts of the case and not upon the opinion of witnesses resident in that part of the country. So the question is excluded.

Mr. Manager PERKINS. We have nothing further to ask of this witness, Mr. President.

Mr. DANIEL. Mr. President, the question, it seems to me, is a double one. It may mean, Did the party actually reside there? or it may mean, Did he legally reside there? If it is in order to make that suggestion to the Chair, I beg leave to do so. It is capable of a double interpretation.

The PRESIDING OFFICER. The Chair has already ruled on it.

Mr. DANIEL. In one interpretation it may be correct, and in another it may be wrong.

The PRESIDING OFFICER. Is there anything more required of this witness?

Mr. Manager PERKINS. Not from me.

Cross-examined by Mr. HIGGINS:

Q. You are the tax collector of Pensacola, and have been for a number of years?—A. Yes, sir; of Escambia County.

Q. Is it or not a part of your duty to make out the list of taxables?—A. It is not my duty, sir.

Q. Who does make out that list?—A. The tax assessor.

Q. Of course he makes an assessment of all property, real and personal, for taxation. Does he also make a list of taxables for the poll tax?—A. He does.

Q. Does he tax all persons, or only all male persons?—A. All who are liable for the poll tax.

Q. "All who are liable." Is that all residents above 21?—A. Yes.

Q. And under the age of 55, I understood you to say?—A. Between 21 and 55.

Q. When that tax list is made out, does it become your duty to collect those taxes?—A. It does.

Q. Do you wait upon the option of the taxable to pay his tax, or do you collect it from him whether he is willing or unwilling?—A. I wait until the expiration of the time which the law allows him to pay voluntarily, and if he does not pay, then I force the collection by attachment.

Q. Did you ever collect any poll tax from Judge Swayne?—A. I never did.

Q. You never collected any from him?—A. I did not.

Q. He was not assessed for poll tax?—A. He was not.

Q. Do you know what his age is?—A. I do not.

Q. Did you know what his age was then?—A. I did not.

Q. You have said that when the court was not in session he did not remain in Pensacola; or substantially that, as I recollect.—A. To my knowledge, he did not.

Q. What is your knowledge?—A. Only in a general way.

Q. Then, if it is only in a general way, why did you give that answer to the question?—A. I gave that answer to the question to the best of my knowledge and belief.

Q. What is your knowledge?—A. That he was not a resident there.

Q. You say he was not there except during court. Do you know where he went when court was over?—A. I do not.

Q. Did you ever see him off or on the train going away?—A. I do not go to the depot to watch what people go away.

Mr. HIGGINS. I am not asking the reasons. Answer my question.

A. I did not.

Q. (By Mr. HIGGINS.) Did you keep any watch on his movements?—A. I did not.

Q. Did you do it through anybody else?—A. I did not.

Q. Then if you do not know what his movements were, how could you say he was not in Pensacola after a term of court, for either a short or a long time?—A. Only from what others had said.

Q. Then it was only hearsay?—A. That is all.

Q. And not from any knowledge of your own? [A pause.] What is your answer?

The WITNESS. I did not answer the question. I did not think it was a question, and I did not answer it.

Mr. HIGGINS. I ask the reporter to read the question and the preceding question and answer.

The reporter read as follows:

Q. Then it was only hearsay?—A. That is all.

Q. And not from any knowledge of your own? [A pause.] What is your answer?

Q. (By Mr. HIGGINS.) And your statement, not from any knowledge of your own, is that he did not remain in Pensacola after the term of court was over?—A. Yes, sir.

Q. What is your answer?—A. I do not know whether he stayed there or not.

Q. I did not hear distinctly as to the time when you say he did reside in Pensacola, within your knowledge?—A. I have not said so.

Q. So far as you know, then, he never did?

The WITNESS. Become a legal resident?

Mr. HIGGINS. I mean to say, is there any house he ever occupied or lived in there?

The WITNESS. To my knowledge?

Mr. HIGGINS. Yes.

A. No, sir.

Q. You have no knowledge on that subject, then?—A. No, sir.

Mr. HIGGINS. That will do.

Reexamined by Mr. Manager PERKINS:

Q. When Judge Swayne was present holding court, did you see him?—A. On the street; yes, sir.

Q. Did you ever see him on the street or elsewhere when the United States court was not in session?—A. I think not, sir.

Mr. HIGGINS. Mr. President—

Mr. Manager PERKINS. Wait until I get through my question.

Mr. HIGGINS. I wish to say this, Mr. President, will not the learned counsel kindly refrain from leading his witness—

Mr. Manager PERKINS. I am not leading him.

Mr. HIGGINS. So as to have the witness answer the question "yes" or "no," categorically.

Mr. Manager PERKINS. I am not leading him. Most questions can be answered "yes" or "no," and that usually is the best way to answer a question.

Q. (By Mr. Manager PERKINS.) Were you about the streets and about the hotels and about the court-house at times when the United States court was not in session?—A. Only on the streets.

Q. On the streets?—A. Yes, sir.

Q. Were you in Pensacola most of the time?—A. Yes, sir.

Q. Did you chance to pass on the street Judge Charles Swayne at any of those times when the court was not in session?—A. I think not.

Mr. Manager PERKINS. That is all.

The PRESIDING OFFICER. Who is the next witness?

Mr. Manager PERKINS. Call Mr. Northrup.

Mr. Manager PALMER. While the witness is coming I wish to submit to the President the authority on which I objected to the question asked by the Senator from Illinois [Mr. Hopkins]. It is a ruling made by Chief Justice Chase in the trial of Andrew Johnson, and is to be found in the second volume of the Congressional Globe, at pages 166, 169, and 170, where it was decided that the managers had a right to object to a question asked by a Senator.

I merely call attention to the authority to show that I was not objecting without some reason.

The PRESIDING OFFICER. The Presiding Officer made no different ruling from that which has been cited, I think.

WILLIAM H. NORTHRUP sworn and examined.

By Mr. Manager PERKINS:

Q. Where do you live?—A. Pensacola, Fla.

Q. How long have you lived there?—A. About twenty years.

Q. Where did you live before that?—A. I followed the sea. I made my home in Rhode Island previous to that.

Q. You lived there?—A. At Narragansett Pier, R. I.

Q. Do you hold any position?—A. Yes, sir.

Q. What position?—A. I am the postmaster at Pensacola.

Q. How long have you been the postmaster at Pensacola?—A. I was appointed on the 7th of March, 1903.

Q. Appointed by whom?—A. By the President.

Q. You have been postmaster since?—A. Yes, sir.

Q. And still are? Do you know Judge Charles Swayne?—A. Yes, sir.

Q. Have you known him many years?—A. Yes, sir.

Q. When did you first know him?—A. In Pensacola.

Q. When?—A. About 1890, I think.

Q. Did he at any time board with you?—A. Yes, sir; he boarded at my house.

Q. You had a boarding house in Pensacola?—A. Yes, sir.

Q. Down to what time did you keep that boarding house?—A. Down to 1898, or about that time.

Q. During what years did Judge Swayne board with you?—A. From 1891 to about 1896.

Q. During what periods of the year in those years was he at your house?—A. He was there at the fall term of the court and the spring or summer term. Whenever the court was in session, he was at my house.

Q. What time was the fall term held?—A. I do not remember.

Q. About?—A. October or November; something like that.

Q. At what time was the spring term held; about when?—A. In March, or about that time.

Q. Do you know of his stopping at any other place in Pensacola between 1891 and 1896?—A. No, sir; I do not remember where he did stop.

Q. That was not the question. Do you know whether he stopped anywhere except with you?—A. No, sir; I do not remember.

Q. You do not remember?—A. No, sir.

Q. You do not remember that he stopped anywhere else?—A. No, sir; I do not remember whether he stopped anywhere else or not.

Q. Have you any recollection of any other place at which he did stop?—A. Yes, sir; I know that he stopped at the Escambia Hotel.

Q. Yes; but prior to 1896?—A. No, sir; I do not remember; I do not know.

Q. When did he first stop at the Escambia Hotel, to your knowledge?—A. I do not remember, sir. I can not tell you.

Q. Do you remember whether or not it was subsequent to his stopping with you?—A. I think it was after 1896.

Q. Do I understand you to say he never stopped with you after 1896?—A. I am not positive as to that; I do not think he did.

Q. That is your recollection. Now, you may state how long Judge Swayne stopped in Pensacola during those years.—A. I do not know how long he stopped.

Q. How long did he stop with you?—A. He stopped at my house during the term of court, the different times when it was held there.

Q. Did he stop there at any other times than during the terms of court?—A. No, sir.

Q. When did he arrive?—A. He arrived there usually on the night before opening court.

Q. The night before opening court?—A. Yes, sir.

Q. When did he leave?—A. He left as soon as the court was adjourned.

Q. During those years did you know of his being in Pensacola any time except when the court was in session?—A. No, sir.

Q. You have lived in Pensacola for many years?—A. Yes, sir.

Q. Are you largely acquainted with the residents?

The WITNESS. With the residence portion?

Q. With the residents of Pensacola?—A. Yes, sir.

Q. How large a place is it?—A. Something between twenty and twenty-five thousand.

Q. What room did Judge Swayne take when he boarded at your house?—A. He took any room that was vacant.

Q. He took any room that was vacant?—A. Yes, sir.

Q. In the same way that any other boarder who came there?—A. Yes, sir.

Q. Did he pay for any room in your house except when he was present?—A. No, sir.

Q. When he went away did he leave in your house any of his personal effects?—A. Not that I know of.

Q. What was done with his room when he vacated it?—A. Some one else generally got it.

Q. Did you ever have any talk with Judge Swayne with reference to buying a house in Pensacola?—Yes, sir.

Q. When was that?—A. I think it was along about 1896 or 1897.

Q. 1896 or 1897?—A. Yes, sir.

Q. You may state what he said in reference to that matter, about the house he wanted.—A. He described such a house as he wanted, and I took him in a buggy with me at one time, and we drove around the city to see if he could locate a house that would suit him.

Q. Will you state what he said as to the kind of house he wanted?—A. He said he wanted a house with large parlors. He wanted a 40-foot parlor, was one thing. He wanted a tile bathroom and a hard-wood library—such a house as that.

Q. Were there any houses of that kind in Pensacola that you knew of?—A. Not at that time; no, sir.

Q. You are pretty well acquainted with the houses?—A. Yes, sir.

Q. Did you at one time look at a house there with Judge Swayne?—A. Well, I rode around in my buggy with him, but I did not go into any of the houses. I pointed out the houses that could be bought.

Q. Was there a house opposite to you that was for sale?—A. Yes, sir.

Q. Whose house was that?—A. It belonged to Charley Wilson, a place called "Winter Rest."

Q. When was it that that house was for sale?—A. In 1896 or 1897.

Q. What sort of a house was that?—A. It was a fine house. It cost \$15,000, I understand.

Q. You may state whether or not that house had parlors 40 feet long.—A. It had a parlor 40 feet long, but it had pillars which obstructed the parlor.

Q. What did Judge Swayne say about the pillars?—A. He did not say anything about those pillars, but he described a parlor that would be unobstructed 40 feet long.

Q. He wanted a parlor 40 feet long without any obstruction?—A. Yes, sir.

Q. In this house it was obstructed by pillars?—A. Yes, sir; by pillars.

Q. Do you know whether he went into that house, or do you not know?—A. No, sir; I do not know that.

Q. Have you any knowledge of Judge Swayne's going into any other house that you pointed out to him?—A. No, sir.

Q. What did he say when you pointed out any of these houses? Do you remember?—A. No, sir; I do not remember.

Q. You do not remember what he said? You do remember that he did not go in to examine the houses?—A. He did not go in to examine any houses.

Q. You were well acquainted with Pensacola during all these years?—A. Yes, sir.

Q. Were there houses for sale in Pensacola?—A. Yes, sir.

Q. And houses to rent in Pensacola?—A. Yes, sir.

Q. Plenty of them?—A. I do not know about that. There were houses to rent and houses for sale—always have been.

Q. How many houses did you point out to Judge Swayne that were for sale?—A. Four.

Q. What sort of houses were those?—A. They were nice houses.

Q. Was there plenty of vacant land and vacant lots in Pensacola?—A. Yes, sir.

Q. And still are, I presume?—A. And still are; yes, sir; acres of them?

Q. On which it would be possible to build a house?—A. It would be; yes, sir.

Q. Lots in a good part of the town?—A. Yes, sir.

Q. Do you know whether or not Judge Swayne finally bought a house in Pensacola?—A. He did.

Q. When was that?—A. I think that was in 1902 or 1903.

Q. A house that belonged to Mr. Blount?—A. Yes, sir; it belonged to Judge Blount.

Q. How long had that house been in the city?—A. About eight years; perhaps eight or nine years.

Q. Have you ever been in the house?—A. No, sir.

Q. What sort of a house was that?—A. Well, it is a one-story, comfortable house.

Q. A one-story house?—A. Not a very pretentious house.

Q. A smaller house than the house you showed him?—A. Yes, sir.

Q. From its outside dimensions, would you think that was a house that contained a 40-foot parlor?—A. I should think not.

Q. There would not be room for it in that house, would there?—A. No, sir.

Q. Now, down to 1896 did you ever see Judge Swayne in Pensacola except during the periods when, as you understood, the United States court was in session?

Mr. HIGGINS. Mr. President, I should like to have that question read.

Mr. Manager PERKINS. Very well; let it be read.

The PRESIDING OFFICER. The question will be read by the stenographer.

The question was read by the reporter, as follows:

Now, down to 1896 did you ever see Judge Swayne in Pensacola except during the periods when, as you understood, the United States court was in session?

Mr. Manager PERKINS. Is there any objection to it?

Mr. HIGGINS. It is very close to a leading question, but we will withdraw any objection to it.

Mr. Manager PERKINS. I do not think it is leading at all.

The PRESIDING OFFICER. The witness may answer.

The WITNESS. No, sir; I do not remember of seeing him there at any other time.

Q. (By Mr. Manager PERKINS.) Have you seen Judge Swayne in Pensacola since 1896?—A. Yes, sir.

Q. At what times have you seen him there?—A. At different times when he was holding court and at other times. He has been residing there since 1902, I think.

Q. Has he been residing there since this house was bought of Blount?—A. Yes, sir.

Q. Since that time, whenever that was?—A. Yes, sir; he resided there since then.

Q. And you do not know, do you, whether that purchase was in the spring of 1902 or the spring of 1903?—A. I do not know.

Q. Now, when Judge Swayne stayed with you did he have any of his family with him?—A. He did at times; yes, sir.

Q. Whom?—A. He had his son and daughter, his mother, and his wife there.

Q. How many times?—A. On one or two occasions.

Q. On one or two occasions?—A. Yes, sir.

Q. How long were they there?—A. A very short period.

Q. A few days?—A. Yes, sir; a few days.

Q. Do you remember what was the occasion when his wife was there?—A. No, sir; I do not.

Q. You do not remember about that?—A. No, sir.

Q. Did they leave when he left?—A. Yes, sir.

Q. How many days in the year, or about how many days is it your recollection, that Judge Swayne stopped with you during each year from 1892 to 1896? About how long?—A. Well, it was during the term of the court.

Q. How long was that?—A. I think from two weeks to four weeks. I think the court usually held from two to four weeks.

Q. About what was the entire time that he stayed with you in any one year, to the best of your recollection?—A. Well, I should put it at six weeks.

Q. Will you say that he did not exceed six weeks in any one year, to the best of your recollection?—A. Yes, sir.

Q. Did you notice any difference between 1892 and 1893 and 1895 and 1896 in reference to Judge Swayne's stays at Pensacola?—A. Yes, sir.

Q. What difference? A.—I noticed that he has been there a great deal more since 1900 than he was previous to that time.

Q. But that was not the question I asked. Just notice, witness, and

get your dates right. You say he has been there more since 1900?—

A. Yes, sir.

Q. Was there any difference in his stays at your house between 1892 and 1896, when he was staying at your house?—A. No, sir; it was about the same thing.

Q. It was just about the same during those five years?—A. Just about the same thing.

Q. Have you held any other offices in Pensacola since 1890 than postmaster?—A. I have been city councilman, mayor of the city, and on different boards—city boards.

Q. Then you held different official positions between 1890 and 1900?—

A. Yes, sir.

Q. How long a portion of the time have you been in Pensacola from 1892 to 1900?—A. A greater portion; nearly all the time.

Q. Nearly all the time?—A. Nearly all the time; yes, sir.

Q. You may state whether or not Judge Swayne left any directions with you in reference to forwarding letters after the spring term or any term.—A. I do not remember as to letters. He left me his address, at one time at Guyencourt, at another time at Wilmington, Del.

Q. When did he leave you the address at Guyencourt?—A. Well, it must have been along in 1893, 1894.

Q. 1893 or 1894?—A. Yes, sir.

Q. He left you that address when he left your house?—A. Yes, sir.

Q. And when did he leave you the address at Wilmington, Del.?—

A. That was about 1900.

Q. About 1900?—A. I think so.

Q. Was that after he had ceased to board with you?—A. Yes, sir.

Q. It was subsequent to that?—A. Subsequent to that; yes, sir.

Q. That he gave you his address at Wilmington, Del.?—A. Yes, sir.

Q. What time of year was that?—A. I do not remember what time of year it was.

Q. Do I understand you to say that you do or do not remember whether Judge Swayne left any address as to where his mail should be forwarded?—A. He did not leave any address as to his mails; that is, not to me as postmaster, but he gave me his address when he left there along in 1893 or 1894 at Guyencourt, and about 1900 he gave me another address, Wilmington, Del.

Q. Was the address given you at Guyencourt in 1893 and 1894 changed down to 1900?—A. I do not remember of its being changed at all.

Q. I thought you said that about 1900 he gave his address at Wilmington?—A. Yes, sir; 1900.

Q. Had there been any change in the Guyencourt address from the time he gave it to you until he gave you the Wilmington address?—A. No, sir.

Q. Did he ever give you any other address?—A. No, sir.

Mr. Manager PERKINS. I think that is all.

Mr. BLACKBURN. I desire to ask the witness a question.

The PRESIDING OFFICER. The question will be read.

The Secretary read as follows:

What rate of board did Judge Swayne pay whilst a boarder in your house?

Mr. Manager PERKINS. Will the Secretary kindly read that again? The Secretary again read the question.

Mr. FORAKER. Mr. President, in view of what was stated a moment ago on behalf of the managers as to the right of the managers to object to a question propounded by a Senator, and particularly in view of what was stated as to the ruling of the Chief Justice in the trial of Andrew Johnson, I deem it my duty to call attention to the fact that on page 310 of Extracts from Journals of the Senate of the United States of America in Cases of Impeachment I find the following ruling by the Chief Justice.

Mr. Johnson, Senator, having asked a question, objection was made by the managers.

Mr. Manager Bingham having commenced an argument in support of the objection,

Mr. Davis raised the question of order that it was not in order for the managers to object to a question propounded by a member of the Senate.

The Chief Justice ruled that neither the managers nor the counsel had a right to object to a question being put by a member of the Senate, but might discuss the admissibility of the evidence to be given in answer to such question.

The ruling by the Chief Justice was submitted to the Senate and was sustained by the Senate, the rule on that subject being Rule XVIII, Governing Impeachment Trials, which reads as follows:

XVIII. If a Senator wishes a question to be put to a witness, or to offer a motion or order (except a motion to adjourn), it shall be reduced to writing, and put by the Presiding Officer.

In other words, the rule is without qualification, and this is the first time I ever heard it suggested that a court conducting a trial did not have a right to put any question the court might see fit to ask. If there be any ruling such as managers have stated there is, made by the Chief Justice in the course of that trial, I have overlooked it.

Mr. BLACKBURN. Mr. President, I withdraw the question.

The PRESIDING OFFICER. The question is withdrawn.

CROSS-EXAMINATION OF WILLIAM H. NORTHRUP.

By Mr. HIGGINS:

Q. Mr. Northrup, do you know that Judge Swayne after the summer or autumn of 1894, and prior to 1900, when he came to Pensacola always stayed at your house and never anywhere else?—A. He stayed at my house. I do not know of his staying anywhere else.

Q. I say that you know when he stayed at your house?—A. Yes, sir.

Q. But do you know whether he stayed at other times elsewhere than at your house?—A. No, sir; I do not.

Q. You do not?—A. No, sir.

Q. I will ask you if you do not know that he stayed, and frequently stayed, during those years at the Escambia Hotel?—A. I do not remember when he stayed at the Escambia Hotel. I do not remember what the date was.

Q. Do you remember of his being ill at the Escambia Hotel and your nursing him there?—A. I do.

Q. When was that?—A. I do not remember, sir.

Q. Then you do know that you nursed him there once?—A. I do.

Q. And might he not have been there when you did not know it and did not nurse him?—A. It is possible.

Q. I understand you took him and drove to look at houses?—A. Yes, sir.

Q. One drive?—A. Yes, sir.

Q. And that he went into no one of the four houses you showed him?—A. Not to my knowledge.

Q. But you were with him, and you would have seen him?—A. At that time.

Q. On that drive he went into no house?—A. No, sir.

Q. Were those houses for sale or for rent or both?—A. Both.

Q. Both for sale or rent at the time?—A. Yes, sir.

Q. Were they occupied by residents or were they unoccupied houses?—A. I think two of them were occupied; the other two were not.

Q. Could possession of the two that were occupied have been obtained at once, families being already in them?—A. I do not know about that.

Q. You do not know that?—A. I merely know that they were for sale.

Q. Not having gone into the house, Judge Swayne could express no opinion to you as to the character of the house suiting him?—A. No, sir.

Q. Do you know whether he examined properties in Pensacola with anybody else besides you for the purposes of residence?—A. No, sir; I do not know. I have heard that he did.

Q. Do you know when?—A. No, sir.

The PRESIDING OFFICER. If the witness does not know and has only heard, of course he can not state it.

Mr. HIGGINS. Certainly not.

Q. (By Mr. HIGGINS.) What reason did he give for driving around with you to look at those houses?—A. Well, he told me that he intended to purchase a house if he could find one to suit him.

Q. You say that you did not see him except during terms of court?—A. Between 1891 and 1896 I do not remember of seeing him except during the terms of court.

Q. And at that time you were not postmaster?—A. No, sir.

Q. Do you know what is known as the "Simmons cottage"?—A. Yes, sir.

Q. What street is that on?—A. On Wright and Barcelona, I think.

Q. Did Judge Swayne ever occupy that with his family?—A. Yes, sir.

Q. What year?—A. I think it was about 1900.

Q. About 1900? That was, then, before 1902, of which you speak?—A. Yes, sir.

Q. Then he did live there in 1900, did he? Answer the question, please.—A. I suppose he did.

Q. Do you not know that he did?—A. I know that he rented that cottage and he lived there; yes, sir.

Q. Who were the members of his family there at the time?—A. His wife was with him. I do not know who the members of his family were.

Q. Now, during the time prior to 1900, what members of his family were staying at your house when he was staying with you?—A. His wife came there on one occasion; his daughters and two sons, I think.

Q. On different occasions?—A. I do not remember of their being there except on one occasion.

Q. Now, when he was not there, Mr. Northrup, when he was not, within your knowledge, in Pensacola, have you any knowledge as to where he was—whether he was holding court elsewhere, away on other business?

Mr. Manager PERKINS. Mr. President—

Mr. HIGGINS. This is cross-examination.

Mr. Manager PERKINS. It is not cross-examination; but if the witness knows, I do not object.

Mr. HIGGINS. He is your witness.

Mr. Manager PERKINS. I do not object at all.

Mr. HIGGINS. Go ahead and answer.

The WITNESS. I do not know where he was; no, sir.

Q. (By Mr. HIGGINS.) You do not know where he was at all? Do you know what took him away from Pensacola after court was over?—

A. I know at times he had been holding court in Texas, in Louisiana also, I think, and other places.

Q. And so far as you know the only address that he gave to you when he left your house was once at Guyencourt, Del., and another time at Wilmington, Del.? Is that right?—A. That is right.

Q. Can you tell us when he gave you the Guyencourt address?—

A. No, sir; I do not remember.

Q. The year?—A. I do not remember the year; no, sir.

Q. Was it before 1896 or after?—A. Yes, sir; 1893 or 1894, I should think.

Q. When did he give you the Wilmington address?—A. I think that was about 1900.

Q. Do you know how long those addresses stood with you as the ones that would reach him?—A. No, sir; I do not.

Mr. HIGGINS. I have no further question.

By Mr. Manager PERKINS:

Q. Just a question, please. You said you remember the time when Judge Swayne was sick at the Escambia Hotel?—A. Yes, sir.

Q. Was that during the years that he boarded at your house or subsequent?—A. I think it was along in 1897—about 1897 or 1898.

Q. 1897 or 1898?—A. That he was sick at the Escambia Hotel.

Q. You spoke of a cottage. What was the name of the cottage rented in 1900?—A. The Simmons cottage.

Q. Were you ever in that cottage?—A. I have been in the hallway only. I just opened the door and stepped inside the hall.

Q. How often?—A. Only once.

Q. Have you any personal knowledge of how long Judge Swayne stayed in that cottage?—A. No, sir; I do not know.

Q. You have no personal knowledge about it?—A. No, sir. I know he rented it and was in there.

Q. Did he ever, when he was boarding with you or subsequently, have any talk with you about Guyencourt?—A. Yes, sir; he often spoke of Guyencourt.

Q. When?—A. I do not remember the date or the occasion.

Q. Did he speak of Guyencourt more than once?—A. In speaking of his horses. I have heard him speak of his horses being at Guyencourt.

Q. Were his horses ever at Pensacola, to your knowledge?—A. No, sir.

Q. What else did he say in reference to the Guyencourt house? How did he refer to it?—A. He referred to it as "the old homestead."

Q. Did that occur once or many times?—A. Well, he always, whenever referring to it, referred to it as "Guyencourt, the old homestead."

Q. You have seen Judge Swayne from time to time since 1896?—A. Yes, sir.

Q. You are on friendly terms with him?—A. Yes, sir.

Q. You may state whether or not he has talked with you with reference to Guyencourt.—A. Yes, sir.

Q. You may state whether or not he has always spoken of it in the same way—whether he has made any change in the way he referred to it.—A. He has always spoken in the same way to me.

Q. How long did I understand you to say that Judge Swayne and his wife and daughter stopped with you at your house?—A. I said for a short time. I do not remember how long they were there.

Q. What do you mean by "a short time"?—A. Perhaps ten days, or such a matter—a week or ten days, I should say.

Q. Did they stop with you at any other time than that week or ten days from 1892 to 1896?—A. I only remember of their being there at that time.

Q. Once?—A. Once.

Q. How many times do you remember any of the boys being there?—A. I remember the boys being there during the summer time on the occasion when they came down with Judge Swayne. They were around there for a short time—I do not remember how long.

Q. More than once?—A. I only remember of their being there once.

Mr Manager PERKINS. I think that is all the questions we have to ask.

Mr. HIGGINS. We have no further questions, Mr. President.

Mr. MALLORY. Mr. President, I should like to propound a question to the witness.

The PRESIDING OFFICER. The Senator from Florida [Mr. Mallory] desires to submit a question to the witness, which will be read by the Secretary.

The Secretary read as follows:

Q. Were you not intimate with Judge Swayne? If you say you were, will you state whether or not before 1902 he ever remained in Pensacola more than a few days when his court was not in session?

The PRESIDING OFFICER (to the witness). The first part of the question was whether you were intimate with Judge Swayne.

A. I am perfectly intimate, and I do not remember of his being there for any length of time except during the term of court.

Q. (By Mr. HIGGINS.) Does that include the time after he rented the Simmons cottage?—A. I do not remember how long he was in the Simmons cottage.

Q. Answer my question. You say that you do not know of his remaining in Pensacola more than a few days after any term of court. I will ask you if that was true after he rented the Simmons cottage?—

A. Yes, sir; that is true after he rented the cottage. I do not remember whether he was in there. I did not come in communication with him in any way.

Q. So that you did not know whether he was in town or not?—A. I did not know.

Mr. Manager PERKINS. We have nothing more, Mr. President.

Mr. Manager PALMER. Mr. President, the managers have been asked for the particular authority for making objection to a question asked by a Senator. I refer the Senator from Ohio [Mr. Foraker] to the Congressional Globe, volume 40, trial of Andrew Johnson, page 169, in which the Chief Justice made this ruling—

Mr. FORAKER. Will the manager kindly give the date of the proceeding, so that I may refer to it?

Mr. Manager PALMER. The 13th of April, 1868, page 169. The ruling was as follows:

The CHIEF JUSTICE. The honorable manager will wait one moment. When a member of the court propounds a question it seems to the Chief Justice that it is clearly within the competency of the managers to object to the question being put and state the grounds for that objection as a legal question. It is not competent for the managers to object to a member of the court asking a question; but after the question is asked it seems to the Chief Justice that it is clearly competent for the managers to state their objections to the questions being answered.

The PRESIDING OFFICER. The manager will allow the Presiding Officer to refer to the ruling which was cited by Senator Foraker. It is in these words:

The Chief Justice ruled that neither the managers nor the counsel had a right to object to a question being put by a member of the Senate, but might discuss the admissibility of the evidence to be given in answer to such question.

The ruling seems to be that an objection can not be made to a Senator putting a question, but that the admissibility of the evidence to be given might be objected to and discussed.

Mr. Manager PALMER. That is right. That is what we understood. We objected to the admissibility of the answer to such a question, because we did not think it was a legal question.

The PRESIDING OFFICER. That is what the Chair understood; not that the managers objected to a question being put by a Senator, but objected to the question being answered.

Mr. Manager PALMER. Yes; we objected to its being answered, not to its being asked.

Mr. FORAKER. The objection to the answer goes only to the admissibility of the evidence; in other words, the managers can only raise the question of competency—of relevancy.

Mr. Manager PALMER. That is all.

HARRY E. GRAHAM sworn and examined.

By Manager PERKINS:

Q. What is your full name?—A. Harry E. Graham.

The PRESIDING OFFICER. One moment, please. The Presiding Officer, of course, does not wish to limit the managers of the House or the counsel for the respondent as to the time taken in any necessary examination of witnesses, but it is evident to all that the Senate must conclude this case as quickly as it is possible for it fairly to do so. The Presiding Officer trusts that in the examination of witnesses care will be taken not to call their attention to immaterial points, but to proceed on material points only.

Mr. Manager PERKINS. That has been the endeavor of the managers, Mr. President.

Q. (By Mr. Manager PERKINS.) Where do you live?—A. At Pensacola, Fla.

Q. At what hotel do you live?—A. At the Escambia Hotel.

Q. Have you with you the registers of the Escambia Hotel?—A. I have for certain years.

Q. Produce them. For what years?—A. 1898, 1899, and 1900.

Q. Did you find any prior registers?—A. I did not.

Q. Did you examine the registers you found for 1898?—A. Yes, sir.

Q. Did you examine those registers to see where was found the name of Charles Swayne?—A. Yes, sir; I did.

Q. Have you the registers here?—A. I have them here in the Sergeant-at-Arm's office.

Q. You had better produce them, then. You may state where you found the name of Charles Swayne registered and what you found.

The WITNESS. May I refer to memoranda?

Mr. Manager PERKINS. Yes, sir; unless objection be made.

The WITNESS. I will state the first—

Mr. Manager PERKINS. Wait half a minute until we can hear. Now, state—

Mr. HIGGINS. What is the question.

Mr. Manager PERKINS. I ask where the witness found the name of Charles Swayne registered, and what he found?

Mr. HIGGINS. We should like the books here before that is done. Let the witness bring the books, and let them speak for themselves.

Mr. Manager PERKINS. Very well. I supposed he had brought the books in.

The books were produced and placed before the witness.

Q. (By Mr. Manager PERKINS.) Now, will you refer to and read the first entry you found? What is the first entry you found?—A. The first entry I found is dated—

Mr. Manager PERKINS. We offer the entry in evidence, and the witness will read it, if there be no objection.

Mr. HIGGINS. We will look at it.

Mr. Manager PERKINS (to the witness). Go on.

The WITNESS (examining book). The first entry is under date of Saturday, May 28, 1898—"Charles Swayne, St. Augustine, Fla."

Q. (By Mr. Manager PERKINS.) Whose handwriting is that in? Do you know?—A. I beg your pardon.

Q. When is the next entry you find?—A. The next entry is dated Friday, November 11, 1898—"Charles Swayne, Fla."

Q. Are there any other entries in the year 1898?—A. Yes, sir; there is one other.

Q. When is that?—A. Under date of Thursday, December 8, 1898.

Mr. HIGGINS. December?

The WITNESS. December 8, 1898—"Charles Swayne, Fla."

Q. (By Mr. Manager PERKINS.) What entries do you find in 1899?—A. I have several entries in 1899.

Q. Well, you may give the dates.—A. Under date of Thursday, January 26, 1899—"Charles Swayne, Fla."

Q. When is the next entry?

Mr. HIGGINS. What year was that—1899?

The WITNESS. 1899.

Q. (By Mr. Manager PERKINS.) What is the next entry?—A. Under date of Sunday, March 19, 1899—"Charles Swayne, City."

Q. What next?—A. Under date of Wednesday, October 4, 1899—"Charles Swayne, City."

Q. When next?—A. Saturday, November 11, 1899—"Charles Swayne, City."

Q. Well, what next?—A. Friday, November 24, 1899—"Charles Swayne, City." That is all for 1899. I have some for 1900. Shall I read them?

Q. Do you say that there are any entries in 1900?—A. Yes, sir.

Q. Well, state them briefly, as quickly as you can.—A. The first one is Monday, January 22, 1900—"Charles Swayne, City."

Q. Are there any others?—A. Yes, sir; Thursday, May 3, 1900—"Charles Swayne and wife, City."

Mr. HIGGINS. May 3 or May 30?

The WITNESS. May 3.

Q. (By Mr. Manager PERKINS.) Is that all?—A. No, sir; Wednesday, November 7, 1900—"Charles Swayne, City."

Q. Does that close 1900?—A. That closes 1900.

Q. Well, now, are there any other entries of his name on the books of the hotel in 1898, 1899, and 1900?

The WITNESS. Is his name on the register, you mean?

Mr. Manager PERKINS. Yes; on the register.

A. No, sir; I have not found any.

Q. Very well. Do the books of the hotel show how long he stayed there?—A. In some cases I find they show the date of the departure and in other cases they do not.

Q. Do they show the amounts for board that were paid?—A. They show the amounts; yes, sir.

Q. The amounts paid. You live in this hotel?—A. I do; yes sir.

Q. What is the rate per day there?—A. Well, the rates differ. They run from \$2 a day up. The ordinary rate there is \$2.

Q. Very well, take it at \$2, giving the judge the benefit of the doubt, what was the amount that he paid on these various items, beginning in 1898?

Mr. HIGGINS. We want the books.

Mr. Manager PERKINS. You may have them, if you so desire. The witness may make the statement, and that will save time. If you will not take his statement, of course—

The WITNESS. I have the ledgers here.

Mr. Manager PERKINS. If counsel want it from the books, the witness will read it from the books.

The WITNESS. On the first date, of May 28, 1898, the amount of the bill was \$14.90.

Mr. HIGGINS. How much per day?

The WITNESS. The rate is written here \$2.

Q. (By Mr. Manager PERKINS.) What is the next one?

A. On November 11, 1898, \$18.50.

Mr. HIGGINS. What is the rate?

The WITNESS. The rate is not given.

Mr. HIGGINS. Well, now, if the court please, where the rate is not given and it is not known, it is perfectly conjectural how long a time that bill calls for.

The WITNESS. I will state that the ledger shows the length of time in this case.

Mr. HIGGINS. If you give the length of time, that is all right.

The WITNESS. He registered on the 11th of November and left on the 20th.

Q. (By Mr. Manager PERKINS). Whonever the ledger shows the time he left, witness, state that.

A. Yes, sir. On the 8th of December, 1898, the amount of his bill is \$22.60. The ledger shows that he left on the 18th of December.

Mr. HIGGINS. On the 18th?

The WITNESS. On the 18th of December; yes, sir. On the 26th of January, 1899, the bill was \$5.75. The rate is not given and the time of departure is not given.

On the 19th of March, 1899, the amount of the bill is \$13. The rate is not given and the time of departure is not given.

On the 30th of April, 1899, there is an entry for Judge Swayne and for Henry C. Swayne. I will state that I did not find the register to correspond with this entry on the ledger. This shows—

Mr. HIGGINS. That is March 30?

The WITNESS. No; April 30—the 30th of April, 1899. It shows that Charles Swayne and Henry C. Swayne began day board at \$1.25 per day. That is marked here. There is no room indicated. The amount of that bill is \$18.75.

On October 4, 1899, the amount of his bill is \$4.50. There is an item here, "October 6," which apparently is the time he left, but I do not know.

Under date of November 11, 1899, the amount of the bill is \$14, and it is noted here that he left on the 20th of November.

On November 24 the amount of the bill is \$17. There is an entry apparently where he left—"Breakfast on the 3d of December."

On the 22d of January, 1900, the amount of the bill was \$9.50. He left on the 27th.

On the 3d of May, 1900, which is the date he registered "Charles Swayne and wife," the amount of the bill is \$54.90. It does not show the time of departure nor the rate.

Those are all the entries I find on this ledger.

Q. (By Mr. Manager PERKINS.) You have given all the entries you find on the ledger?—A. Yes, sir.

Q. Now, I should like to ask—

The WITNESS. There is one other register on the 7th of November, 1900, but I could not find the ledger that corresponded to that.

Q. You could not find the amount that he paid in that time?—A. No, sir.

Mr. Manager PERKINS. Now, I should like to ask the counsel for the respondent whether they concede that the entries upon the register are in the handwriting of Charles Swayne? If they do not we will prove it, but not by this witness.

Mr. HIGGINS. They are all in one handwriting. We do not doubt that at all?

Mr. Manager PERKINS. Is it conceded that they are in the handwriting of Charles Swayne?

Mr. HIGGINS. That is substantially an affirmative answer to the learned manager.

Mr. Manager PERKINS. That is all sufficient.

The PRESIDING OFFICER. Do counsel desire to cross-examine the witness?

Mr. THURSTON. We do not desire any cross-examination.

The PRESIDING OFFICER. The next witness will be called.

Mr. Manager PERKINS. The next witness is J. Emmett Wolfe.

J. EMMETT WOLFE, sworn and examined.

By Mr. Manager PERKINS:

Q. Where do you live?—A. Jacksonville, Fla.

Q. How long have you lived there?—A. Thirty-eight years, I think.

Q. What is your business?—A. I am a lawyer.

Q. Have you held any official position there; and if so, what?

The WITNESS. Do you mean in connection with the court or otherwise?

Mr. Manager PERKINS. In connection with the court.

A. I was, for about six years, assistant United States attorney and United States attorney of the United States court for the northern district of Florida.

Q. In what years?—A. Commencing in 1893 and ending in 1900.

Q. During that time did you know Judge Swayne?—A. Yes, sir.

Q. He was the judge of the court of which you were the attorney?—A. Yes, sir.

Q. Did you have occasion to see him?—A. I saw him at every term of court held during those years.

Q. From 1894 how much of the year was Judge Swayne in Pensacola?

The WITNESS. Commencing with the year 1894?

Mr. Manager PERKINS. Yes.

The WITNESS. Up to what year?

Mr. Manager PERKINS. Down to 1900.

A. I should say an average of sixty days during the year at Pensacola and Tallahassee.

Q. How many terms of the court were there in Pensacola?—A. Two terms in Pensacola a year and two at Tallahassee.

Q. You may state whether the court went from Pensacola to Tallahassee?—A. Generally immediately after the Pensacola term the Tallahassee term was held.

Q. Did you know when Judge Swayne arrived in Pensacola?—A. I always knew it, I think; yes, sir.

Q. Did you know when he left?—A. Generally; yes, sir.

Q. When did he arrive?—A. He arrived generally the night before or the morning when the term of court opened. That was the usual rule.

Q. When did he leave?—A. And he generally left the night when court adjourned, the following day, or shortly thereafter, as a rule.

Q. You mean he left Pensacola?—A. He left Pensacola.

Q. During those years did you know of his being in Pensacola at any time except during the terms of court; and if so, when?—A. Yes. He generally came to Pensacola in the middle of the summer for a day, or, perhaps, two days, and generally in the middle of the winter—that is, January—for a day or two, either at Pensacola or Tallahassee; and once or twice I remember his being there for several days when court was not in session hearing admiralty cases and demurrers.

Q. What business brought him there in the summer and in January?—
A. Generally the business of approving the accounts of court officers.

Q. Was he there at any other time except when he was brought there by the business of the court?—A. Not usually. I do not recall his being there at other times during those years.

Q. Was there any difference in his stays at Pensacola between the years 1893 and 1894 and the years 1896 to 1900, if you remember?—
A. I think probably toward the latter of those years; that is, 1898, 1899, and possibly in 1900, his stays were somewhat lengthened. Gradually there seemed to be more time spent in the district.

Q. Did you have occasion to apply to Judge Swayne for various orders in the court?—A. Yes, sir; at various times we had orders to be signed by him.

Q. Where did you send those orders when he was not holding court in Pensacola?—A. We sent them to Guyencourt, Del.; that is, after 1896. I think until 1896 Judge Swayne had a home in St. Augustine.

Q. Where did you send them down to 1896—to St. Augustine?—A. In the winter time to St. Augustine, but I can not say certainly that I ever addressed Judge Swayne at St. Augustine. I do not recall it now.

Q. What do you say?—A. I am not certain that I ever addressed Judge Swayne at St. Augustine, but he did have a winter home at St. Augustine up to 1896, according to the best of my knowledge. After that, when he was not in the city, I addressed him at Guyencourt, Del.

Q. You wrote him at Guyencourt at any time other than when he was holding court in Pensacola?—A. At any time when he was not in Pensacola; yes, sir.

Q. What sort of orders did you have to send there?—A. They were formal orders, usually for drawing juries, possibly some orders on demurrers, and applications for pardon, that had to be signed by Judge Swayne as district judge. Those were the orders that I had to have signed.

Q. During the years from 1894 to 1900, did you know of any place where Judge Swayne resided in Pensacola?—A. I knew that he boarded, when in the city, for such times as he would be in the city, at Captain Northrup's, and one winter, for about thirty days, possibly—I think it was probably in 1900—he had a residence rented in Pensacola.

Q. Where was that?—A. That was what is called the Simmons residence on North Barcelona street.

Q. How long was he there?—A. I should say sixty days, as a fair estimate, within my knowledge.

Q. Was he at the Simmons cottage any more than sixty days from 1900 down to 1903?—A. The only time I recall his living in that cottage was that one winter. He may have lived there longer. I can not say certainly about that. But that is the only year—

Q. Have you any knowledge of his living there except about sixty days during the winter of 1900?—A. That is my recollection. I am not, of course, perfectly clear on points of that kind. They are too far back.

Q. That is your recollection. Do you remember any remarks made by Judge Swayne at any time in reference to adjourning his court at Pensacola?—A. I recall that several times adjournments did occur for

different reasons. I remember one instance in which Judge Swayne stated, I think, that he was desirous of adjourning court because either his son was to graduate or he desired to see him before he went on a journey, I think to Cuba. I am uncertain as to which one of these reasons was given.

Q. Any other occasion?—A. At another time I understood his wife's health was not good and he wanted to return to her as quickly as possible. At other times I understood he had to hold terms in other districts, and therefore the terms at Pensacola had to be shortened.

Q. Did he ever say anything to you about sending papers to Guyencourt?—A. His directions generally were if I desired to communicate with him I could send matters to Guyencourt.

Q. You may state whether or not at any time cases brought by the Government were postponed on account of the fact that the judge was not present in Pensacola.—A. There were certain cases postponed at times when the terms of court were shortened. Cases which otherwise would have been tried were continued by reason of the adjournment of the court.

Q. When was the spring term held?—A. By law it is fixed in March. It is usually held in April or perhaps early in May.

Q. When was the next term of court held after the May term?—A. In November, as a rule.

Q. And a case that went over at the May term stood over until November?—A. Yes, sir.

Mr. Manager PERKINS. I think that is all. Cross-examine.

Cross-examined by Mr. HIGGINS:

Q. Mr. Wolfe, you say Judge Swayne was in Pensacola sixty days during the year?—A. I say that would be an estimate. In my judgment that would cover the number of days, on an average, that he was there during the year between the years 1894 and 1900.

Q. Did you always have personal knowledge as to whether he was there or not there?—A. I think so.

Q. Why?—A. Because of my official connection with the court.

Q. Did the fact that you were United States attorney lead you always to know whether the Judge was in town or not?—A. It gave me a very lively interest in the court—

Mr. HIGGINS. I understand that.

A. The Judge, and everything pertaining to it.

Q. But when court was not in session there was no occasion for the Judge to be at the court?—A. No; not necessarily.

Q. Therefore he might have been in town and you not know it?—A. I should hardly think so.

Q. I say he might have been.—A. He might have been.

Q. He might have been. That is it. You say you never wrote any letter to him when he was away other than to Guyencourt?—A. Not to my knowledge.

Q. And you never addressed a letter to him at St. Augustine?—A. Not to my knowledge; not to my recollection at this time, although I may have written such letters.

Q. But you have no recollection of it. Have you any knowledge of your own as to any residence he had outside of Pensacola?—A. No, sir; except what he told me about sending letters, and a conversation about his home in Guyencourt and his horses and farm.

Q. Then his home and his horses and his farm at Guyencourt constitute the indication you gained from him by conversation as to where he had a residence, if it was not in Pensacola?—A. Yes, sir; I should say that.

Q. Can you state to the court how long, during these absences, he was holding court elsewhere out of his district?—A. No, sir; I can not tell.

Q. So that these absences might have been when he was holding court in other places?—A. I always knew during those years of his being detailed to hold court in other districts, because generally something was said about the fact by Judge Swayne himself, or by some of the officers of the court, that at a certain date he was detailed to go to another district.

Q. And it was because of such service, imposed upon him under law, that at times the terms of the court at Pensacola were, as you have termed it, shortened?—A. Some of them; yes, sir.

Q. And at times, because of such absences, orders had to be sent to the judge for signature?—A. Some of them.

Q. You can not say where he was when he was not in Pensacola?—A. No, sir; except as I had been directed to address him at Guyencourt. Mr. HIGGINS. I think that is all.

Reexamined by Mr. Manager PERKINS:

Q. When Judge Swayne was not holding court at Pensacola, were you ever directed to address him anywhere except at Guyencourt?—A. I can not say about that.

Q. Have you any recollections?—A. I might have been given directions to send letters to New Orleans. I do not recall any communication addressed to any other place than Guyencourt, although such communications may have passed.

Q. How many times were you told to address him at Guyencourt?—A. It occurred several times through these years, as he would be going away.

Q. What did he say to you in reference to Guyencourt or his home in Guyencourt?—A. He never said anything specific that I can recall now on a certain occasion, except occasionally I have heard him mention the fact that he had a home there and had horses and had a farm. He spoke of driving his horses.

Q. He had a home and a farm and horses at Guyencourt?—A. That is generally, I should say, his language.

The PRESIDING OFFICER. Were not similar questions asked on the direct examination?

Mr. Manager PERKINS. I think not; but if so, I beg pardon. We have nothing more.

Mr. FAIRBANKS. I submit an order as a modification of the order agreed to yesterday with respect to printing the proceedings in document form; and I ask for its adoption.

The order was read and agreed to, as follows:

Ordered, That 600 copies of the proceedings of the Senate sitting in the trial of the impeachment of Charles Swayne be printed daily, 200 for the use of the Senate and 400 for the use of the House of Representatives, and that the "usual number" be not printed until the close of the trial, when the entire proceedings shall be printed as a document.

Mr. FAIRBANKS. I understand it will be quite agreeable to all parties concerned if the Senate sitting as a court of impeachment should now adjourn; and I make that motion.

The motion was agreed to; and (at 4 o'clock and 25 minutes p. m.) the Senate sitting as a court of impeachment adjourned until Monday, February 13, at 2 o'clock p. m.

The managers on the part of the House and the respondent and his counsel thereupon retired from the Chamber.

IN THE SENATE, *February 13, 1905.*

The PRESIDENT pro tempore (at 2 o'clock p. m.). The hour to which the Senate, sitting as a court of impeachment, adjourned has arrived. The Senator from Connecticut will please take the chair.

Mr. PLATT, of Connecticut, assumed the chair.

The PRESIDING OFFICER (Mr. Platt, of Connecticut). The Senate is now in session for the trial of the impeachment of Charles Swayne, United States district judge in and for the northern district of Florida. The Sergeant-at-Arms will make proclamation.

The Sergeant-at-Arms made the usual proclamation.

The PRESIDING OFFICER. The Sergeant-at-Arms will notify the managers, if they are in attendance.

The managers on the part of the House of Representatives to conduct the impeachment were announced by the assistant sergeant-at-arms, and by him conducted to the seats assigned them.

The respondent, Judge Charles Swayne, accompanied by his counsel, Mr. Higgins and Mr. Thurston, entered the Chamber and took the seats assigned them.

The Journal of the Senate sitting as a court for the trial of the impeachment Saturday, February 11, was read.

Mr. FAIRBANKS. Mr. President, I move the adoption of the following order.

The PRESIDING OFFICER. It will be read by the Secretary.

The order was read, and agreed to, as follows:

Ordered, That there be printed for the use of the Senate sitting for the trial of the impeachment of Charles Swayne 150 copies of the brief prepared by the counsel for the respondent, and that the usual number be not printed.

The PRESIDING OFFICER. Are the managers ready to proceed?

Mr. HIGGINS. Mr. President, in respect to the application made by counsel for the respondent for an attachment against Louis P. Paquet, we desire to have the matter properly investigated as to whether the witness is really able to attend or not, and to that end we ask that the attachment may issue, and that the officer or the Sergeant-at-Arms serving the same may be charged with the discretion of determining whether the witness is able to attend or not. That is the course which has been pursued in practice with which I am familiar. In other words, where there is doubt in the mind of the court or of counsel as to whether a witness is able to attend or not, the court awaits the return of the sheriff or the marshal in the premises.

The PRESIDING OFFICER. The sixth rule of the Senate for impeachment trials provides that motions for attachment must be decided by the Senate rather than the Presiding Officer. Whether it be neces-

sary for the Senate to retire to consult upon this matter the Presiding Officer does not know, but he will state the motion to the Senate.

Mr. Paquet, a witness summoned for the respondent, has furnished the certificate of a physician that he has been ill since January 31, and is still ill, confined to his bed, and probably will not be able to travel for two or three weeks. Counsel for respondent now moves that an attachment may issue, and that the Sergeant-at-Arms in serving the same be authorized to use his discretion to determine whether the witness is or is not able to travel. Unless there be some motion made to retire for the consideration of this question, the Presiding Officer will submit the motion to the Senate. [Putting the question.]

Mr. TELLER. I ask for the yeas and nays.

Mr. FORAKER. Mr. President—

The PRESIDING OFFICER. The yeas and nays have been requested. I suppose the Presiding Officer should first ascertain whether there is a second. Is there a second?

Mr. FORAKER. Before the yeas and nays are ordered I should like to inquire whether or not any statement has been made as to the testimony that it is sought to bring before the Senate by this witness? Has anything been stated as to the importance of it or the nature of it? We are entirely without any advice except only that a witness has furnished a physician's certificate that he is unable to travel and will not be able to travel for two or three weeks.

Mr. HIGGINS. Mr. President, in answer to the query of the Senator, I have to say that the witness is a most material witness and his testimony most important. He is one of the three attorneys in the Davis and Belden case who were charged with contempt in that case. He left Pensacola, as I am instructed will be shown, immediately after the publication of Sunday morning in the newspaper, and went to New Orleans, and so was not tried for contempt before the court. He took a writ of prohibition from the supreme court, or the circuit court of appeals—I am not certain to which he appealed—and thereafter he came into the court for the northern district of Florida, and there apologized and admitted the contempt and was discharged.

Now, his testimony goes much beyond that. It goes to the time, which is a disputed point, when Elza T. Davis, one of the other two witnesses, was employed as counsel in the Florida Maguire suit, and as to that point we are very anxious to have his testimony. Really in an ordinary case his absence would be a ground for a continuance of the case, in the opinion of counsel for the respondent.

Mr. BACON. Mr. President, if I am in order to make an inquiry, in order that the statement of the Presiding Officer may be distinctly understood, I understood the Presiding Officer to say that the Sergeant-at-Arms would be clothed with discretion. From that I gather that if the witness is not in a condition to be brought with safety to himself he would not be brought, and if he is in a condition to be brought he will be brought. Is that the meaning of the word "discretion" in that connection?

The PRESIDING OFFICER. That was what the Presiding Officer understood from counsel when the motion was made.

Mr. HIGGINS. That is the correct understanding, Mr. President.

Mr. CULBERSON. Mr. President, I desire to inquire whether it is not possible for counsel to agree to take the deposition of this witness?

The PRESIDING OFFICER. Will the managers respond?

Mr. Manager PALMER. Mr. President, we offered to take the deposition of Mr. Durkee in Jacksonville, Fla., and it was declined on the part of counsel. But we are quite willing to take Mr. Paquet's deposition, if there is time for it, in New Orleans, if he can not be brought here. We would much prefer to have him brought here, because we think he is quite as important a witness for us as for them.

Mr. HIGGINS. Mr. President, there is great difficulty in the preparation of interrogatories and the taking of a deposition and its return in time for the closing of the testimony in this case. I think it is impossible for it to be done. The taking of the testimony would be through with before that testimony or deposition could be executed. But we are willing, and I make the tender, to receive the testimony of Mr. Paquet before the investigating committee, if the managers are willing to accept that.

Mr. Manager PALMER. We could not do that.

Mr. HIGGINS. Well, that is all.

Mr. SPOONER. Mr. President, whether a witness shall be brought by an attachment or not is for the judgment of the Senate as a court, I should think, and I should like to hear it somewhat discussed, if there are authorities sustaining the proposition that a court issues an attachment for a witness leaving it to the sheriff to determine whether the judgment of the court or the writ shall be executed or not. I should like to have the authorities produced.

So far as the Senate knows this witness is not able to attend. The Presiding Officer has laid before the Senate a letter of the wife of the witness stating his condition and a certificate of his physician that he is ill—not only confined to his house, but confined to his bed—and is not able to travel. I suggest that at least the matter be not decided at once.

Mr. HIGGINS. Mr. President, I accept the suggestion that it should not be decided at once, but I beg to say one word in respect to the matter raised by the Senator; and that is that the date the certificate of the physician was made was several days ago. To be sure, we had a telegram here on Saturday from Mrs. Paquet stating that such a certificate had been forwarded; but beyond the actual condition of the witness at the time the certificate was furnished, it becomes altogether a matter of conjecture thereafter as to when he would or when he would not be able to travel. Therefore a messenger or an officer of this court would be the most effective agency for ascertaining the matter on the ground.

I will say further to the Senator that I only have made this suggestion as a matter of practice within the knowledge, and familiar knowledge, of whatever court may have had such a practice. Of course, one of the difficulties of this tribunal is that it is made up from all the land, and the practice in different courts may be different on this point; but it is the practice with which I have been familiar for forty years.

The PRESIDING OFFICER. The Presiding Officer understands, then, that for the present the motion is withdrawn or laid over.

Mr. HIGGINS. It lies over.

The PRESIDING OFFICER. Are the managers ready to proceed?

Mr. Manager PALMER. I wish to ask for an attachment for Simeon Belden, of New Orleans. I will state that I had a letter from Mr. Belden stating that he was ill, had the grippe, but that he thought he would be able to get here by Tuesday morning. I telegraphed him

yesterday that he must start at once. A dispatch was received in this city by somebody yesterday that he expected to start on Tuesday. In order to preserve our rights, I ask that we have an attachment for Mr. Simeon Belden, who is a very important witness in this case.

The PRESIDING OFFICER. Do the managers desire that that motion shall be decided at this time?

Mr. Manager PALMER. I think so, sir. I think we ought to have it recorded that the attachment has been requested.

The PRESIDING OFFICER. The managers on the part of the House ask for an attachment for witness Simeon Belden.

Mr. TELLER. Mr. President, before I vote for an attachment I want to know something about the facts. Sitting in the back seats here we did not hear what the manager said as to the facts. We do not even know whether this man has been served with a subpoena.

Mr. Manager PALMER. Well, Mr. President, the Sergeant-at-Arms reports that this man was served, and, as I stated, he sent me a letter, which I received yesterday, saying that he had been served; that he was ill and had not been able to start, but he thought he would be able to get here by Tuesday morning—that is, to-morrow.

Mr. CULLOM. That he would be able to get here?

Mr. Manager PALMER. Yes; to get here. But yesterday a dispatch was received from him that he thought he would start on Tuesday morning. Mr. Belden is certainly a very important witness in this case. He was one of the persons who was put in prison for contempt by Judge Swayne, and we need him in this trial. In order to preserve our rights, we ask for this attachment. We will endeavor to get him without sending the attachment for him if we can, but we do not want to be held guilty of laches in not applying for an attachment just as soon as we find the witness is not here.

Mr. HALE. Let me ask if this witness is not one of the persons upon whose motion charges against Judge Swayne have been filed and presented to the Senate?

Mr. Manager PALMER. Mr. President, he is one of the persons. He is not a reluctant witness. He is a sick witness. He says he is sick in bed and can not start before Tuesday morning. He is not a reluctant witness in any sense. I will not say he is an eager witness, but I will say he is very desirous of being here.

Mr. HALE. I only wish to say, Mr. President, that I think the opinion of the Senate in respect to this part of the procedure is that we should proceed as fast as possible. A great deal of the time of the Senate is being consumed at this late stage of the session by the hours that we are obliged to put in each day in this trial. The time is further consumed by controversies about the presence of witnesses who do not appear here, and the jurisdiction of the Senate over other public business is all the more and more taken away. I may venture to express the hope that in these matters counsel, if possible, will relieve the Senate of these controversies about the presence of witnesses.

The PRESIDING OFFICER. The Presiding Officer will put the question to the Senate, unless there is further—

Mr. SPOONER. Mr. President, before that is done may I ask for whom is the attachment sought?

Mr. Manager PALMER. For Simeon Belden.

The PRESIDING OFFICER. The motion is made that an attachment issue for Simeon Belden.

Mr. SPOONER. As I understand it, Mr. President, this witness is subpoenaed on behalf of the managers, and the managers state that he is eager to come, and not attempting to evade at all compliance with the subpoena issued by the Senate. He is anxious to come, and will come as soon as he can, but he has been detained by illness. I hardly feel like voting to issue an attachment for a witness who is eager to come and will come at the earliest possible moment, but who in the meantime is detained or delayed by illness. That seems to be this case.

The PRESIDING OFFICER. Is the Senate ready for the question? [Putting the question.] In the opinion of the Chair, the "noes" have it.

Mr. PATTERSON. I ask for the yeas and nays.

The PRESIDING OFFICER. The Senator from Colorado asks for the yeas and nays. Is there a second?

Mr. BERRY. The Senator from Colorado [Mr. Teller] did not ask for the yeas and nays on this question.

Mr. TELLER. I did not ask for the yeas and nays on this.

Mr. BERRY. It was on the other case that the Senator from Colorado [Mr. Teller] asked for the yeas and nays.

The PRESIDING OFFICER. The Presiding Officer understood that the junior Senator from Colorado [Mr. Patterson] asked for the yeas and nays.

Mr. CLAY. Mr. President—

Mr. PATTERSON. I asked for the yeas and nays, Mr. President, on the motion for an attachment for Simeon Belden. I think the managers on the part of the House are entitled to the attachment.

Mr. CLAY. Mr. President, just a word. I understood one of the managers to say that this witness had notified the managers that he would reach here Tuesday. They had been notified that he was sick; his wife had telegraphed that he was sick, and he has a certificate of a physician sent here stating that he was sick.

Several SENATORS. No.

Mr. BERRY. That is the other case.

Mr. CLAY. Well, I think a certificate was read here the other day stating that the witness was sick.

Mr. BERRY. That was in the other case—the case of Mr. Paquet.

Mr. CLAY. I may be mistaken about that, but the manager says, anyway, that the witness will be here; that he has stated that he was sick, and that he will start Tuesday. He is doing the very best he can to get here, and I ask the managers on the part of the House, would it not be better to wait until Tuesday? They might hear from him again, and it might save the necessity of asking for an attachment.

Mr. Manager PALMER. Well, Mr. President, we are entirely willing to wait. All we are asking is that we shall not be accused after a while of having omitted to apply for this attachment in time. I am perfectly content to wait. I do not want to attach this man; I do not think he ought to be attached really; but, at the same time, we must preserve the rights we have got here, so that somebody may not rise and say after a while, "Why did you not apply for this attachment last Monday?"

Mr. PATTERSON. In view of the statement of the manager on the part of the House, I withdraw my request for the yeas and nays.

The PRESIDING OFFICER. The Presiding Officer understands that the motion is for the present withheld.

Mr. Manager PALMER. Yes.

The PRESIDING OFFICER. Are the managers ready to proceed with the witness?

Mr. Manager PERKINS. I take the liberty of stating, Mr. President, that, in conformity with the very just suggestion of the Senator, I shall endeavor to have the evidence of the witnesses to be called as brief as is consistent with the necessities of the case. I hope that, with the exception of one formal witness, I can close all the evidence on the question of nonresidence, so as to give the Senate some time to attend to other duties this afternoon. I call Mr. Wentworth.

GEORGE P. WENTWORTH, sworn and examined.

By Mr. Manager PERKINS:

Q. Where do you live?—A. Pensacola, Fla.

Mr. HIGGINS. I want the name of the witness first.

The WITNESS. George P. Wentworth.

Mr. TELLER. Mr. President, if we are to take part in this trial, which we think we must, under our oath and the Constitution, I insist that we shall be allowed to hear what is going on. If the manager conducting the examination would stand in the middle of the center aisle or somewhere near there, we probably could hear, and the other side of the Chamber ought to hear quite as well as they now do. We in this part of the Chamber can not hear from the point where the manager is standing.

Mr. Manager PERKINS. I desire to stand wherever the Senate can hear me best. I had supposed on Saturday afternoon when I stood here that the questions and answers were heard in all parts of the Senate from the fact that I heard no complaint from anyone afterwards. If that was a mistake, then I can change my position to-day, but I judge that on Saturday I was heard in all parts of the Senate, including the last two rows on the other side of the Chamber.

Mr. TELLER. Mr. President, I should like to say that on Saturday the manager was not heard here a great deal of the time. We did hear the witnesses, and so we got along very well. This morning we have not been able within the last few moments to hear the managers at all.

Mr. Manager PERKINS. I think I will make myself heard in the questions.

Q. (By Mr. Manager PERKINS.) Where do live?—A. Pensacola, Fla.

Q. How long have you lived there?—A. Since 1877.

Q. What is your business?—A. I am secretary and general manager of the Escambia Realty Company, and a practicing lawyer also.

Q. Were you at any time a clerk in the office of the district attorney or any other public office?—A. Yes, sir; I was clerk, appointed March, 1898; resigned January 1, 1903, and was reappointed January 1, 1905.

Q. You were a clerk in what office?—A. United States attorney's office for the northern district of Florida.

Q. From what time?—A. From March, 1898, to January 1, 1903, at which time I resigned, but was reappointed January 1, 1905.

Q. You knew Judge Swayne?—A. Yes, sir.

Q. Did you, from your position as clerk, have occasion to know when Judge Swayne was in Pensacola?—A. Yes, sir; I did to a certain extent.

Q. Were you present at the terms of court?—A. Yes, sir.

Q. Did you have any business or relations with the judge from your position as clerk?—A. Well, not directly; indirectly I did, sir.

Q. As representing the office?—A. Yes, sir.

Q. How long was Judge Swayne present in Pensacola, to your knowledge, from March, 1898, to 1903?—A. Well, as a rule, he would come to Pensacola just before the holding of court and would leave generally right after the adjournment.

Q. How many terms of court were held a year?—A. There were two terms a year held in Pensacola, generally. Some years there was one term held in Tallahassee and some years two terms, according to the—

Q. How much time was occupied by those terms of court in all?—A. In Pensacola, ten days or two weeks; in Tallahassee, about one week; that is, each term.

Q. Each term. Was Judge Swayne present in Pensacola or Tallahassee, to your knowledge, from 1898 down to 1900 except during the terms of the court?—A. Yes, sir; he would come there occasionally to hold court in chambers and consider any motions.

Q. For how long a time?—A. Generally two or three days.

Q. Well, was he there at any time, to your knowledge, except when he was there officially holding court of some sort?—A. Not to my knowledge; no, sir.

Q. Not to your knowledge. Did you have occasion to send his papers from the office of the United States attorney when he was not there?—A. Yes, sir.

Q. Where did you send them?—A. Guyencourt, Del.

Q. What sort of papers did you have to send there?—A. Well, in the northern district of Florida there is no regular provision for the appointment of an assistant district attorney. Only during a term of court is one allowed, and his appointment had to be approved by the district judge. We would generally forward the papers to him there, and he would forward them to the Attorney-General. Occasionally, I think, there were motions and orders for juries.

Mr. Manager PERKINS (to the witness). Speak distinctly, Mr. Wentworth, so that all the Senators can hear you.

The WITNESS. Yes, sir; I think there were occasionally orders to draw juries sent to him in Delaware.

Q. (By Mr. Manager PERKINS.) You may state how it was in reference to the orders required in the United States district attorney's office, except those that were granted while the court was actually in session. What was done with them all?—A. Well, there were a good many of them that were sent to him at Guyencourt. Of course occasionally he was holding court in some other part of the country—Texas.

Q. How much delay resulted from that?—A. Well, I can not say as to that; I do not know how much delay. Simply the delay of forwarding the order to Judge Swayne and receiving it back; that was all.

Q. To your knowledge, was there any time, except when Judge Swayne was actually holding a term of the court, at which your office could apply to him for an order except by mail?—A. No; not while he was holding a term of court; no, sir.

Q. No; "except." Was there any time, except when he was holding court, that the United States district attorney could obtain an

order from Judge Swayne except by mailing the papers to him?—A. Not to my knowledge; no, sir. There may have—

Q. Not to your knowledge. By whose instructions were these various papers and draft orders sent to Guyencourt?

The WITNESS. By whose instructions?

Mr. Manager PERKINS. Yes.

A. The district attorney instructed me.

Q. The district attorney instructed you?—A. Yes, sir.

Q. You did not receive any instruction yourself from Judge Swayne?—A. No, sir.

Q. Did you know of any place where Judge Swayne stopped in Pensacola during the years 1898 and 1899, except at the hotel?

The WITNESS. During 1898 and 1899?

Mr. Manager PERKINS. Yes.

A. No, sir; I do not.

Q. Do you know of any place from 1899 down to 1903?—A. Yes, sir. He occupied the Simmons residence, I think, on North Barcelona street, for a while.

Q. When was that?—A. I do not know exactly. I can not tell you exactly.

Q. Do you remember how long it was?—A. Yes, sir; he occupied it for a while. I know his furniture was in the house for some time.

Q. How long was he in there—in that cottage—to your knowledge, if you know?—A. I could not state, sir.

Q. You could not state?—A. No, sir.

Mr. Manager PERKINS. That is all.

Cross-examined by Mr. HIGGINS:

Q. Mr. Wentworth, what was the character of the orders that you had to send to Judge Swayne when he was out of the jurisdiction?—A. They were principally, as I said before, applications for the appointment of an assistant district attorney during the holding of the court.

Q. Would you have to have that order made frequently?—A. Well, just during a term of court. Just prior to the holding of a term of court we would have to have an order, and that order would be forwarded to the Attorney-General. We would make formal application to be indorsed by the judge, and after it had been indorsed by the judge it was referred to the Attorney-General, and he would appoint.

Q. Would he appoint the assistant district attorney?—A. The assistant district attorney; yes, sir. You see the northern district of Florida is not provided with a regular assistant district attorney. It is simply a temporary appointment during a term of court.

Q. You say such orders when made were sent by you to Judge Swayne at Guyencourt?—A. As a rule.

Q. As a rule?—A. Yes, sir.

Q. Where else did you send them to him, if not there?—A. Well, I think on one or, possibly, two occasions they were sent to Texas. I could tell, of course, by the letter book. I have not the letter book.

Q. You have not the letter book?—A. No, sir.

Q. You knew that Judge Swayne was at Pensacola while he was holding court?—A. While he was holding court; yes, sir.

Q. But when he was not holding court, what did you say?—A. I said he was generally at Guyencourt.

Q. How do you know he was there?—A. By sending those orders there—the applications for appointment.

Q. You drew the inference that he was there by the district attorney telling you to mail them there?—A. Yes, sir.

Q. That is all you know?—A. That is all I know.

Q. Except when you sent them to Texas?—A. I think to Texas on one or two occasions.

Q. Where did the judge go; do you know? I will put it this way: Did he leave Pensacola after court?—A. Yes, sir.

Q. How do you know?—A. Well, I did not see him around the court or around the house.

Q. You did not see him?—A. No, sir.

Q. Did you see him leave?—A. No, sir.

Q. Do you know, of your own knowledge, that he did go?—A. Well, I can swear to it as well as I can swear to anything—

Mr. HIGGINS. Please answer my question. I ask the reporter to read the question:

The reporter read as follows:

Q. Do you know, of your own knowledge, that he did go?

A. No, sir; I can not say that I know of my own knowledge.

Q. Do you know where Judge Swayne, in bodily presence, was when he was in Pensacola?—A. No, sir.

Q. Do you not know that, except in the summer months and possibly up to October, he never was in Delaware but occasionally?—A. No, sir; I do not.

Q. Do you not know that at the time he was absent from Pensacola during the winter time of the years of which you speak he was holding court in his circuit, but outside of his district?—A. I can not swear to it; no, sir; I do not know it of my own knowledge.

Q. Then you do not know?—A. I do not know of my own knowledge.

Q. I am only asking for your knowledge.—A. Yes, sir.

Q. You say you are a lawyer, sir?—A. Yes, sir.

Q. How many orders were required to be made a year for the appointment of a United States attorney?—A. Two.

Q. Two?—A. Yes, sir.

Q. At what time of the year would you mail them?—A. It would be generally in March and May, and then again about November, I think.

Q. And then again about November?—A. Yes, sir.

Q. Or before November?—A. The latter part of October or the first of November.

Q. And there were no other orders that you had to send for except those which concerned the appointment of an assistant United States attorney?—A. No, sir.

Q. You do know that Judge Swayne resided in the Simmons residence or cottage?—A. Yes, sir.

Q. But you can not say when?—A. I can not say.

Q. Or for how long?—A. No, sir; I can not say for how long.

Q. And then do you know of his staying at Pensacola between the terms of court at any other place than the Simmons's cottage?

The WITNESS. Since when?

Mr. HIGGINS. At any time.

A. Yes, sir; he was at Captain Northrup's house for some time, and, I think, at Mr. Marsh's house for some time.

Q. When were those times?—A. I can not state definitely.

Q. You can not state definitely? You have stated that he never was there except during terms of court.—A. I still adhere to that proposition.

Q. How could he be staying between terms of court at the houses you have just spoken of?—A. I did not mean to convey that idea.

Q. What idea?—A. The idea that he was in Pensacola at other times than the times he was holding court. As I stated on my direct examination, it is possible he was there some time holding court in chambers.

The PRESIDING OFFICER. The Presiding Officer thinks the witness misunderstood the question.

Q. (By Mr. HIGGINS.) I am going to ask the question: Do I understand you to say that when he was staying at Captain Northrup's and Mr. Marsh's, and—what is the other place?—A. The Escambia Hotel.

Q. The Escambia Hotel—that you only knew of his staying there during terms of court?—A. Yes, sir.

Q. Not between terms?—A. No, sir.

Q. That is of your knowledge?—A. Yes, sir; that is all.

Q. But he might have been in town and you not know it?—A. Yes, sir; he might have been there, and I not know it.

Mr. HIGGINS. That is all.

Reexamined by Mr. Manager PERKINS:

Q. What class of orders did you say you sent to Judge Swayne?—

A. The appointment of assistant district attorney.

Q. Were orders sent for the calling of a jury?—A. Well, those were sent, but my knowledge is not direct—not personal knowledge on that fact.

Q. Were those orders sent from the district attorney's office?—A. Well, I think they were on one or two occasions.

Mr. HIGGINS (to the witness). Speak of your own knowledge, sir?

The WITNESS. I can not swear positively.

Q. (By Mr. Manager PERKINS.) Were orders sent in reference to the adjournment of the term from the district attorney's office?—A. No, sir; not to my knowledge.

Q. From what office would those orders go?—A. I think from the clerk's office.

Q. When you sent those orders to Guyencourt, what became of them? Did you receive them?—A. Occasionally we received them back; and sometimes they were sent by Judge Swayne, in an inclosed envelope, to the Attorney-General.

Q. When you received them back, were they signed by Judge Swayne?—A. Yes, sir.

Q. Did they come back in the ordinary course of the mail?—A. Yes, sir.

Q. From Guyencourt?—A. Yes, sir.

Q. Will you state how many letters a year were written from the district attorney's office addressed to Judge Swayne at Guyencourt?—

A. I am positive of two. I do not know all—about two, but I do not know how many more.

Q. The other orders and letters were not under your jurisdiction?—A. No, sir.

Mr. Manager PERKINS. That is all. Call Mr. A. C. Blount, jr.

Mr. A. C. BLOUNT, jr., sworn and examined:

Mr. NELSON. Mr. President, it is very difficult to hear the witnesses. I think if the witnesses would occupy a stand right in front of the Reporters there in the center, we could hear much better than up where they are placed. I have found great difficulty in hearing the witnesses over here. I would suggest that the witness be allowed to take his stand right in front of the managers and the attorneys.

The PRESIDING OFFICER. The witness suggests that he thinks he will be able to be heard.

Mr. Manager PERKINS. I should like to ask, Mr. President, in view of the suggestion made by the Senator from Colorado, whether the questions which I put are now heard.

Mr. TELLER. Mr. President, we have had no difficulty in hearing the last witness and the last examination. I have not, at any rate, and I understand my associates say the same thing.

Mr. Manager PERKINS. Mr. President, I trust if there is any complaint the Senators will notify us, because unthinkingly, sometimes one omits to speak sufficiently loud.

By Mr. Manager PERKINS:

Q. Mr. Blount, where do you live?—A. I live in Pensacola, Fla.

Mr. BEVERIDGE. Mr. President, the witness will have to do very much better than that, if he is to be heard by any Senator in this part of the Chamber.

The PRESIDING OFFICER. The Presiding Officer is doing the best he can to have the witness heard.

Mr. BEVERIDGE. Senators have no difficulty in hearing the Presiding Officer, but the witness we do not hear, nor have we heard very many of the witnesses. The examination, so far as the witnesses are concerned, seems to be conducted as though it were a hearing in chambers.

Q. (By Mr. Manager PERKINS.) Where do you live?—A. I live in Pensacola, Fla.

Q. How long have you lived there?—A. Forty-four years.

Q. What is your business?—A. I am a lawyer.

Q. Do you hold any position there; and if so, what?—A. I hold no official position at present.

Q. You have been a judge there?—A. I have been judge of the criminal court of record for eight years.

Q. How long have you known Judge Swayne?—A. Ever since he has been district judge for the northern district of Florida.

Q. Have you had occasion to see him from 1894 down to this time?—A. I have, frequently.

Q. What law office are you connected with?—A. I am junior member of the firm of Blount & Blount.

Q. You may state whether that office has had a large practice in the United States court?—A. It has.

Q. And that has been true during all this period?—A. All of this period.

Q. Have you known Judge Swayne personally?—A. I have.

Q. During what time, from 1894 to 1900, was Judge Swayne in Pensacola, to your knowledge?—A. To the best of my recollection, very little longer than the court over which he presided held its sessions.

Q. And how long a time did those terms last?—A. Usually about two weeks.

Q. Two courts in each year?—A. Two courts in each year. One in the fall, usually in November, and the other in the spring, usually in March.

Q. Do you know where he stayed when in Pensacola?

The WITNESS. While in Pensacola?

Mr. Manager PERKINS. Yes.

A. He stayed, to the best of my information—

Mr. HIGGINS. Beg pardon. I do not want your information, sir.

Mr. Manager PERKINS. I submit that the witness is entirely correct. He is stating his knowledge.

Mr. HIGGINS. No; "information" is what he said.

The WITNESS. To the best of my knowledge and belief.

Mr. Manager PERKINS. Go on.

A. He stayed at the Escambia Hotel. He also stayed or boarded with Capt. W. H. Northrup.

Q. (By Mr. Manager PERKINS.) And did you know, Judge Blount, of any other place, except Northrup's boarding house and the Escambia Hotel, where Judge Swayne could be found in Pensacola from 1894 to 1900; and, if so, where?—A. I know of no other place, unless it may have been at a house belonging to Capt. B. F. Simmons, which he leased for a time.

Q. Do you know when he leased it?—A. I do not.

Q. Do you know, of your own knowledge, how long he was there?—

A. I can not say that I do.

Q. Did the office of Blount & Blount have any occasion to send papers, which required the signature of Judge Swayne or the action of Judge Swayne, to him when the court was not in session?—A. It did.

Q. During all those years?—A. During all those years.

Q. What did you do with them?

The WITNESS. Do you mean when he was not in the city of Pensacola?

Mr. Manager PERKINS. When he was not in Pensacola. Where did you send them?—A. They were usually sent to Guyencourt, Del.

Q. Did you afterwards receive them back?—A. I presume we did.

Q. What is your recollection?—A. We did, whenever—

Q. Signed or acted upon by the Judge?—A. In almost every instance, so far as I can recollect.

Q. Did any delay in obtaining orders or relief result from this procedure?—A. Sometimes.

Q. Were those orders or papers such as could have been acted upon at the time if there had been a judge present in the district?—A. If you will permit me to state, most of our business conducted in Judge Swayne's court was conducted by the senior member of our firm, Mr. W. A. Blount. Personally, I do not recollect ever having sent an order to Judge Swayne for his signature.

Q. You knew of papers that were sent by the office?—A. I knew that papers were sent and papers received back.

Q. I ask you whether you can state from your knowledge whether those papers were such as might have been signed by the judge on the spot if he had been there?—A. They were.

Q. Did you sell a house to Judge Swayne?—A. I did.

Q. When?—A. On the 30th day of May, 1903.

Q. That was a house in Pensacola?—A. It was my private residence.

Q. In Pensacola?—A. In Pensacola.

Q. What price was paid for it or agreed to be paid?—A. I was paid \$1,000.

Q. It was the residence which yourself had occupied?—A. It was.

Q. And that was in May, 1903?—A. May, 1903.

Q. Has that house been since occupied by Judge Swayne and his family?—A. It was occupied by him and his family.

Q. From what time to what time?—A. To the best of my recollection his family moved in in the fall of 1903.

Q. And how long did they stay there?—A. They stayed there at least during that winter.

Q. Until the spring of 1904. Were the furniture and the personal effects of Judge Swayne and his family moved into the house after he purchased it?—A. I did not visit the house after I sold it.

Q. You do not know how that was. During those years did you have frequent conversations with Judge Swayne?—A. More or less frequent, in his private office.

Q. Do you remember any times when he made any remarks in reference to an early adjournment of the court?—A. I do not know that I exactly understand.

Q. Did you ever hear Judge Swayne make any remarks from the bench or off the bench with reference to the adjournment of his court?

The WITNESS. That is rather indefinite.

Mr. Manager PERKINS. I have to be indefinite because my friend on the other side objects to my leading witnesses.

A. I heard him say, of course, that he intended to adjourn court.

Mr. Manager PERKINS. Yes; I dare say.

Q. (By Mr. Manager PERKINS.) Did he ever make any remarks, that you remember, in reference to a desire to adjourn the court early, for any reason?—A. I have heard him say so.

Q. How often?—A. I presume once or twice.

Q. What did he do when he made those remarks; did he adjourn the court?—A. The court would be adjourned.

Q. There was still business on the docket?—A. I think so, at times.

Q. What reason did he give, if you remember, for adjourning the court?

Mr. HIGGINS. I should like to know to what article of impeachment this evidence is directed?

Mr. Manager PERKINS. It bears upon the question of residence—all of it.

Mr. CARMACK. Mr. President, we did not hear the last few questions and answers, and we should like to have them repeated. I refer to the questions with respect to the adjournment of the court.

The PRESIDING OFFICER. The reporter will read the questions and the answers.

The reporter read as follows:

Q. Do you remember any times when he made any remarks in reference to an early adjournment of the court?—A. I do not know that I exactly understand.

Q. Did you ever hear Judge Swayne make any remarks from the bench or off the bench with reference to the adjournment of his court?

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A. The court would be adjourned.

Q. There was still business on the docket?—A. I think so, at times.

Q. What reason did he give, if you remember, for adjourning the court?

The PRESIDING OFFICER. The witness may answer the question.

A. I do not know that I recollect any reason that he gave.

Q. (By Mr. Manager PERKINS.) Did you ever hear him say where he was going when the court was adjourned?—A. To the best of my recollection he would speak of his going home to Guyencourt, Del.

Q. Did he ever give to you any address as to where to send letters or papers after he had adjourned court; and if so, what?—A. Unless he was going to hold court in some other district, his address was Guyencourt, Del.

Q. You say that he referred to his home in Guyencourt, Del. Is that correct?—A. It is, to the best of my recollection.

Q. How often did he do that?—A. It is impossible for me to say.

Q. Once or many times?—A. I can not say it was many times; I can not say it was once. It was at least once, and, to the best of my recollection, more than once.

Q. Did he ever refer to his horses at Guyencourt? Did he speak of having his horses at Guyencourt?—A. He had.

Q. Did he ever make any other reference to Guyencourt; and if so, what?—A. No other reference that I know of, except that he desired to go to Guyencourt to look out for some fine horses he had—good, thoroughbred horses.

Q. Did he ever, to your knowledge, have any horses in the northern district of Florida?—A. None to my knowledge.

Q. Did he to your knowledge have any residence at Pensacola from 1894 to 1900?

Mr. HIGGINS. We think that is asking for an opinion.

Mr. Manager PERKINS. Oh, no. It is simply asking whether there was any place to the knowledge of the witness—

Mr. HIGGINS. It is the same objection that was made on Saturday.

Mr. Manager PERKINS. Not quite. Then a witness was asked whether, in his opinion, Judge Swayne was a resident, and the Presiding Officer held that that was a question of law. I am now asking for a question of fact—whether, to the knowledge of this witness, who saw Judge Swayne during all these years, there was any place in Pensacola occupied by Judge Swayne as a residence?

Mr. HIGGINS. That is a different question.

Mr. Manager PERKINS. Just as I might ask whether my friend has a residence—

The PRESIDING OFFICER. The Presiding Officer thinks the question may be answered.

Mr. HIGGINS. It is not objectionable in its present form.

Mr. Manager PERKINS. Very well.

The WITNESS. He had no residence—no permanent residence—in the city of Pensacola up to the time he leased the Simmons house.

Q. (By Mr. Manager PERKINS.) Did he have any sort of a residence, that you know of, except at the boarding house and tavern where he stayed?—A. None.

Mr. Manager PERKINS. You may cross-examine.

Cross-examined by Mr. HIGGINS:

Q. You speak of your sending orders or letters, correspondence, to Judge Swayne at Guyencourt unless he was holding court out of his district.—A. Yes, sir.

Q. Will you please state how much he was, within your knowledge, holding court out of his district during the time of which you have testified?—A. It would be simply impossible for me to tell how much time he occupied in holding court in other districts.

Q. So that, be it much or little, you can throw no light on the matter to the court by your evidence?—A. None whatever.

Q. You do happen to know of the Judge giving you his address as at Guyencourt?—A. I do.

Q. Do you know whether he ever did that other than in the summer and autumn vacation?—A. The vacation of the court, if held in March—

Mr. HIGGINS. I am not speaking of the court vacation. I am speaking of the vacation which the American people take for their comfort.

The WITNESS. I am talking about Judge Swayne's vacation.

Mr. HIGGINS. I am, too.

The WITNESS. I said, to the best of my recollection, the vacation began in March and ended in November.

Q. (By Mr. HIGGINS.) I ask if it was during that time that he gave you his address as Guyencourt?—A. It was.

Q. Do you know of his having gone to Delaware as early as March?—A. I do.

Q. When?—A. I can not name the year.

Q. How do you recall it and fix it?—A. As many other things are fixed in my mind, without being able to tell the time and date.

Q. Can you name any circumstance by which you can remember his being there at such a time?—A. I can not fix the time and date, but I can recollect that he has gone away from Pensacola in March, or a little after March, after holding court and adjourned court, to Guyencourt, Del.

Q. You know that?—A. I know it as well as I know any other thing that has passed within my—

Q. How do you know where he went?—A. Simply because he stated he was going to Guyencourt, Del.

Q. As early as March?—A. I think so.

Q. Do you more than think, Mr. Blount?—A. I believe.

Q. You have said you do not know whether the Judge was holding court out of his district during most of the winter months during those years?—A. He frequently held court out of the district, in Texas; sometimes he sat on the court of appeals, in New Orleans, La., and sometimes he held court at Birmingham, Ala., and once he held court at Huntsville, Ala. How much oftener I do not know.

Q. Did you have occasion to communicate with him by correspondence while he was at all of those places?—A. I do not think that personally I ever did communicate with him.

Q. Individually, I understood you to say that there was but a single occasion when you did correspond directly with him. It was done by your office, but not by you?—A. I do not know that I ever had any communication personally.

Mr. HIGGINS. That is all.

Mr. Manager PERKINS. I think that is all.

WILLIAM W. POTTER sworn and examined.

By Mr. Manager PERKINS:

Q. Mr. Potter, where do you live?—A. Pensacola, Fla.

Q. How long have you lived there?—A. About twenty-odd years.

Q. Have you held any official position?—A. Yes, sir.

Q. What?—A. I was clerk of the United States district court and deputy clerk of the United States circuit court for the northern district of Florida.

Q. During what period?—A. From 1889 to 1895.

Q. You held this position during the year 1894 and part of 1895?—

A. Yes, sir.

Q. Down to what time in 1895?—A. I think it was in June.

Q. What has been your business since that time?—A. I have been employed in the mercantile business.

Q. Have you had anything to do with Judge Swayne's court since 1895?—A. No, sir; only as a juror.

Q. Only as a juror?—A. Yes, sir.

Q. What is your recollection as to how long Judge Swayne was in Pensacola in any one year during the time you were clerk?—A. In the fall of 1889 or in the winter of 1889—

Mr. HIGGINS. That does not cover this point.

The WITNESS. I think it was in the spring of 1890—

Mr. Manager PERKINS. Never mind about 1890. Come down to 1894.

Q. (By Mr. Manager PERKINS.) How much was he there in the years 1894 and 1895?—A. Well, I do not think he was there more than two or three months in the year.

Q. Was he there at any time to your knowledge except when terms of the court were held?—A. No, sir.

Q. Did you have any occasion to send papers to him from your office?—A. Very few. I think I did send some.

Q. Do you remember where you sent them?—A. I sent them to Guyencourt, Del.

Q. By whose instructions?—A. Well, I could not say about that.

Q. You got instructions from somebody to send them to Guyencourt?—A. Yes, sir.

Q. When you sent them to Guyencourt, did you receive them back from Guyencourt?—A. Yes, sir.

Q. Signed by the judge?—A. Yes, sir.

Q. Do you remember where Judge Swayne stopped in Pensacola in 1894 and 1895 and 1896?—A. I think he stopped at the Escanibia Hotel for one place, and the other places I do not exactly recollect, but there were other places he stopped at.

Mr. Manager PERKINS. I think that is all.

Mr. HIGGINS. We have no questions.

Mr. Manager PERKINS. Call Mr. Coston.

CHARLES M. COSTON, sworn and examined.

By Mr. Manager PERKINS:

Q. Where do you live?—A. Pensacola, Fla.

Q. How long have you lived there?—A. Since June 5, 1895.

Q. What is your business?—A. Lawyer.

Q. Have you known Judge Swayne?—A. I have.

Q. How long?—A. I think since October, 1895, to the present time.

Q. Have you known of his being present at Pensacola holding court?—A. I have, sir.

Q. Had you any business before the court?—A. I am a practicing attorney before that court, and have had business before it constantly.

Q. Then you have at all times known when that court was in session?—A. I have.

Q. And you have known whether the judge was there to hold the court?—A. I have.

Q. You have known of his whereabouts?—A. I have.

Q. Have you known of his being in Pensacola at any time except when the court was in session?—A. I have not, sir; only for a short time, if any.

Q. How long a time, if any?—A. I should judge not more than one week or ten days subsequent to the adjournment of the court; and then only on rare occasions.

Q. How often did that occur?—A. Very rarely. It was just only on rare occasions that he was there at a time subsequent to the holding of the court.

Q. Do you remember his occupying the Simmons cottage?—A. I do.

Q. When was that?—A. I can not say that I remember the exact year.

Q. Would it be your recollection that it was about 1900?—A. I think it was about that time.

Q. How long was he in the Simmons cottage, if you know?—A. I can not say exactly.

Q. About how long?—A. If I remember correctly, it may have been a year or two years.

Q. That he rented it?—A. Yes, sir.

Q. Do you know how large a portion of the time he was actually in Pensacola?—A. A very small portion of the time. As I said, only during the time that court was in session.

Q. In other words, he rented the cottage, but he did not occupy it except during the sessions of the court?—A. No, sir; he did not.

Q. Where did he stop before renting the Simmons cottage?—A. At the Escambia Hotel, if I remember correctly.

Q. Down to the time that he rented the Simmons cottage, did you know of any residence that Judge Swayne had in Pensacola?

The WITNESS. Up to the time of the renting of the Simmons cottage?

Mr. Manager PERKINS. Yes.

A. I do not, unless you describe a residence at a hotel as a residence in a city.

Q. You did not know of his being there prior to 1900 at any time, except when he was at the hotel, during the terms of the court? Is that the fact?—A. That is a fact.

Q. Did you have any occasion to send papers to Judge Swayne at any time?—A. I can not recall that I have ever had occasion to do so. My business before the court was largely criminal.

Q. Do you remember any time when cases stood over any term of the court?—A. Do you mean cases in which I was interested?

Q. Yes.—A. No; I do not. As I said, I am a criminal lawyer; my practice is largely criminal, and of course there was no occasion for cases to stand over.

Q. How long did those terms of the court last?—A. That is a very difficult thing to say.

Q. What is your recollection?—A. Well, I should judge from ten days to two or three weeks.

Q. And there were how many terms a year?—A. I think we have two terms there a year—that is, what you may call two legal terms, and then, of course, they may have a special term that can be called by the judge himself.

Mr. Manager PERKINS. I think you may cross-examine.

Cross-examined by Mr. HIGGINS:

Q. You say that Judge Swayne was at the Escambia Hotel?—A. He was, sir.

Q. And at other places?—A. Yes, sir.

Q. Where?—A. The other places mentioned, you mean—the places that I have mentioned in my examination in chief.

Q. You mentioned the Simmons cottage?—A. Yes, sir; the Simmons cottage.

Q. The Blount House?—A. I did not mention the Blount House. I was not asked about that.

Q. Did he live there?—A. He did, sir.

Q. Did he live at any other place?—A. At Capt. W. H. Northrup's residence.

Q. Did he live at any other place within your knowledge?—A. No, sir.

Q. Do you know where he was when he was not in Pensacola?—A. No.

Q. Do you know on what duty he was serving or whether he was serving on duty or not?—A. I do not, sir.

Q. You can only speak of whether he was in Pensacola so far as you knew?—A. That is all.

Q. And it is to that that your testimony has been confined?—A. That is all.

Mr. HIGGINS. That will do.

Reexamined by Mr. Manager PERKINS:

Q. When did he go to the Blount House, in 1903?—A. I think it was in the latter part of 1902 or in 1903. I do not know positively.

Q. At these times that Judge Swayne was there did you ever see any of his family with him?—A. I did, perhaps on one occasion, if I remember correctly.

Q. On what occasion?—A. The occasion was when the United States cruisers were in port. He had his daughter and, I think, one of his sons there. On another occasion I remember his having introduced me to his oldest son, who I believe is a lawyer in Delaware.

Q. In what year was it that the cruisers were at Pensacola?—A. I think it was in 1902. I am not positive as to that.

Q. How long were the son and daughter at Pensacola at that time?—
A. At that time, if I remember correctly, only during the time the ships were in port; perhaps a little afterwards.

Mr. Manager PERKINS. I think that is all.

Reexamined by Mr. HIGGINS:

Q. Are you personally acquainted with his family, sir?—A. No, sir; only I can say I am personally acquainted with daughter through an introduction, the son through the method——

Q. You did not visit the family at all?—A. No, sir; they were not in town.

Q. Did you know Mrs. Swayne?—A. I have never met Mrs. Swayne.

Reexamined by Mr. Manager PERKINS:

Q. You said that you did not visit Mr. Swayne and his family. Was there ever a time to your knowledge when they were in Pensacola down to 1903 when you could visit them?—A. That is what I tried to explain. I did not go as far as I would like to. I say I never visited them because they were never there long enough to afford me an opportunity to visit them.

Mr. Manager PERKINS. So I understand. That is all.

JOSEPH C. KEYSER, sworn and examined.

By Mr. Manager PERKINS:

Q. Where do you live?—A. Pensacola, Fla.

Q. How long have you lived there?—A. About sixty-seven years; that is, not directly in the town, but in the neighborhood.

Q. How many years do you say you have lived there?—A. I have lived in Pensacola proper about thirty-five years.

Q. About thirty-five years?—A. Yes, sir.

Q. And you have known the residents of the town?—A. Yes, sir.

Q. You had occasion to be about the town more or less all those years?

The WITNESS. You will have to speak a little louder.

Mr. SPOONER. I suggest that the answers of this witness be repeated by the stenographer so that Senators may be advised of his testimony.

Mr. HIGGINS. Or by counsel.

The PRESIDING OFFICER. The Senate will please be in order.

Q. (By Mr. Manager PERKINS.) Have you known Judge Charles Swayne?—A. Yes, sir.

Q. For how many years have you known him?—A. I have known him ten or twelve years.

Q. Have you had any business in the United States courts?—A. I have.

Q. And have you had occasion to know in reference to the holding and sessions of the United States courts?—A. I have.

Q. Have you known when Judge Swayne was present in Pensacola from 1894 down to 1903?

Mr. HIGGINS. Within your own knowledge, sir.

Mr. Manager PERKINS. Yes.

The WITNESS. I can not say as to 1894.

Q. (By Mr. Manager PERKINS.) Begin in what year you did know.. In 1895?—A. I think so; 1895 or 1896.

Q. You have known in reference to his being there from 1896 to 1903?—A. Yes, sir.

Q. Has he been in Pensacola at any time to your knowledge except when the court was in session?—A. I think a few times I have seen him there when court was not in session.

Q. How often?—A. A very few times; probably three or four.

Q. Do you know where he stopped when he was in Pensacola?—A. He stopped at different places.

Q. Well, where?—A. He boarded sometimes at one place, sometimes at another.

Q. Well, can you tell us the names of the places, or do you not remember? Can you tell us the names of the places where he boarded?—A. He stopped a portion of the time with Captain Northrup.

Q. Where else?—A. A part of the time at the Escambia Hotel.

Q. Did you know of his being anywhere else?—A. Not of my own knowledge, but from hearsay.

Q. Well, where did you hear he was?

Mr. HIGGINS. Oh, that is entirely out of the limit.

Mr. Manager PERKINS. If you do not want that question put, I will not ask it then. I thought you might like to have the benefit of it, but I will withdraw the question. I will ask no more questions. That is all.

Mr. HIGGINS. There are no questions from counsel for the respondent.

The PRESIDING OFFICER. Is that all?

Mr. HIGGINS. That will do, Mr. Keyser.

JOHN S. BEARD, sworn and examined.

By Mr. Manager PERKINS:

Q. Where do you live?—A. In Pensacola, Fla.

Q. How long have you lived there?—A. In Florida all my life; in Pensacola about fifteen years.

Q. What is your business?—A. I am a lawyer, sir, by profession.

Q. Have you known Judge Swayne?—A. Yes, sir.

Q. Have you known of his attendance at the terms of the court in Pensacola?—A. Yes, sir.

Q. Have you ever known him to be there at any time except when the court was in session?—A. No, sir; I have not. I can not recall any time that I have known of Judge Swayne being in Pensacola except during a term of court.

Q. How long do the terms of court last?—A. Well, sir, I suppose they average about two weeks a term, possibly, sometimes running to three weeks.

Q. How many terms a year?—A. Two.

Q. Do you know where he stopped down to 1900?—A. Of my own knowledge, I do not.

Q. Do you know anything, of your own knowledge, about his going to the Simmons cottage in 1900?—A. No, sir; I do not. I have only heard that he—

Q. Very well. Do you know of his buying Judge Blount's house in 1903?—A. Only by seeing it in the paper, sir.

Q. Who are the lawyers who do the most business or who did the most business in the United States district court during those years?—A. Well, sir, I should say that Blount & Blount and the firm of Avery

& Avery control a very large majority of the business in that court; possibly 60 or 75 per cent of it.

Q. Have you ever heard complaints made by counsel of inconvenience in their practice by reason of the absence of Judge Swayne from Florida?—A. Repeatedly, sir.

Mr. THURSTON. Wait a minute. I ask the witness not to answer questions until an opportunity is given to object. We object to asking for hearsay testimony. If there are any such cases the attorneys themselves are within call, and the honorable manager is asking this witness to state nothing more than what some other attorney may have said.

Mr. Manager PERKINS. Well, Mr. President, how else can the matter of common reputation be proven? The answer of Judge Swayne, it seems to us, is immaterial. The law requires that he shall live in the district, and if he was not a resident, it was a high misdemeanor. But in his answer it is alleged by way of palliation that he does not think inconvenience resulted to the bar. That we can only meet by evidence of this character.

The PRESIDING OFFICER. The Presiding Officer will submit this question to the Senate. The manager asks the witness, having first inquired who were the lawyers who did most of the business before the district court, if this witness had heard them complain of inconvenience growing out of the absence of Judge Swayne. Objection is made. The Presiding Officer will submit that question to the Senate. Senators who think the question is a proper one will say "aye" [putting the question]; contrary, "no." In the opinion of the Chair the "noes" have it. The objection is sustained.

Mr. Manager PERKINS. I think that is all for this witness.

Mr. THURSTON. We have no questions to ask the witness.

Mrs. HATTIE S. NORTHRUP, sworn and examined.

By Mr. Manager PERKINS:

Q. You live at Pensacola?—A. Yes.

Q. You are the wife of William H. Northrup, who has been examined here?—A. Yes.

Q. It was at your house that Judge Swayne stayed when he was in Pensacola?—A. Yes.

Q. For how many years did he stay with you at your house?—A. Well, I do not just remember. I think it was between 1890 and 1896.

Q. Can you state whether he remained at your house at any time after the court had adjourned?—A. No.

Q. When did he arrive, in reference to the session of the court?—A. Well, he usually arrived the night before.

Q. He arrived the night before and left the day the court adjourned?—A. Well, the day, or the morning following.

Q. Did he occupy any one room at your house, or did he have different rooms at different times?—A. Well, he occupied several different rooms.

Q. Did he bring any furniture with him?—A. No, sir; the room was furnished.

Q. Did he bring anything with him except his carpetbag?—A. His trunk.

Q. And when he went away, Mrs. Northrup, he took with him what he brought?—A. Yes, sir.

Q. He left nothing at your house that was not——

Mr. HIGGINS. I ask that the learned manager would not lead the witness quite so much.

Mr. Manager PERKINS. Very well. [To the witness.] Did he leave anything at your house when he went away?

The WITNESS. No, sir.

Q. (By Mr. Manager PERKINS.) Were any members of his family ever there with him?—A. Yes, sir.

Q. What members?—A. His wife, his daughter, his son, and his mother.

Q. How many times?—A. I think that they were each there once.

Q. And for how many days?—A. Well, that I can not say.

Q. What?—A. I can not say; I can not remember.

Q. A week or—A. It was a long time ago.

Q. Would your recollection be that they were there a week or ten days?—A. Probably.

Q. And only once were they there during the years that Judge Swayne boarded at your house?—A. I think so.

Mr. Manager PERKINS (to counsel for the respondent). You may cross-examine.

By Mr. HIGGINS:

Q. You say they were each there?—A. Yes.

Q. Do you mean they were all there at one time or at different times?—A. At different times.

Q. And after this lapse of time—you say it is a long time ago—you can not say how long it was that they remained?—A. No, sir.

Q. The Judge's stay with you, as you say, began in 1890?—A. I think so.

Q. And ended, you think, in 1896?—A. That is to the best of my remembrance.

Q. So after that you could not speak?—A. No, sir.

Q. As to where he stayed or how long he stayed?—A. No, sir.

Mr. HIGGINS. That is enough.

Mr. Manager PERKINS. Nothing further.

Mr. Manager PERKINS. I will state to the Presiding Officer that I have given all the oral evidence that will be given on this point. There is a certain amount of documentary evidence, and some of it is not entirely ready to present. I should like to reserve the privilege of not presenting that until to-morrow. With that exception, the evidence on this point is closed.

The PRESIDING OFFICER. The Presiding Officer will inquire whether the managers or the counsel desire the witnesses who have been already examined to be retained in Washington longer or whether they may be discharged?

Mr. Manager PALMER. Mr. President, that depends. If we knew that one fact we would be able to give the Chair information on that subject. If the counsel on the other side intend to go into evidence on Judge Swayne's good character, then we shall have to have these witnesses remain. If they do not expect to defend on that ground, then the witnesses can go home. It is up to them to say whether they are going to raise the issue of character.

The PRESIDING OFFICER. The Presiding Officer, then, understands that the managers are not ready at present to have the witnesses discharged?

Mr. Manager PALMER. No, sir.

The PRESIDING OFFICER. Are there further witnesses?

Mr. Manager OLMSTED. I call Mr. E. T. Davis.

ELZA T. DAVIS, sworn and examined.

By Mr. Manager OLMSTED:

Q. Mr. Davis, where do you reside?—A. At Pensacola, Fla.

Q. What is your occupation?—A. Lawyer.

Q. State whether you have recently been in Tyler, Tex.—A. I have.

Q. What railroad do you take to get from Pensacola, Fla., to Tyler, Tex.?—A. I take the L. and N. road to New Orleans.

Q. What do you mean by the L. and N. road?—A. The Louisville and Nashville. From New Orleans to Tyler I go on the Texas Pacific; that is, I go to Mineola on the Texas Pacific.

Q. Where did you stop in Tyler?—A. At the National Hotel.

Mr. Manager OLMSTED. I may state, Mr. President, that this witness is called in support of the first three articles of impeachment—the subject-matter of those articles. [To the witness.] Will you state, if you know, the distance from the National Hotel, at Tyler, to the court room where the district court is held?—A. I think it is about 150 yards or more; that is, if it is the court-house in the square. The square is almost in front of the National Hotel.

Q. Well, it is about a block or so distant from the hotel?—A. Yes, sir.

Q. State, if you know, the railroad fare from Pensacola to Tyler.—

A. I think it is about \$18.

Q. Eighteen dollars?—A. Yes, sir.

Q. Do you know about the sleeping-car fare in the Pullman cars from Pensacola to Tyler?—A. I think it is about \$6.

Q. Would that be for a full section or one berth?—A. One berth, or seat.

Q. Did you take meals on the car going?—A. Yes, sir; part of the way.

Q. What was about the expense of meals on the cars?—A. Well, they would average about a dollar.

Q. What is about the time required to travel from Pensacola to Tyler?—A. I think it is about thirty-two hours.

Q. About thirty-two hours?—A. I think so; yes, sir.

Q. Did you go direct from Pensacola to Tyler?—A. No, sir.

Q. How did you go?—A. I went from Pensacola to Dallas, Tex.; from Dallas to Fort Worth; from Fort Worth back to Dallas; from Dallas to Waco; from Waco to Tyler, and from Tyler to Pensacola.

Q. You went direct from Tyler to Pensacola, you state?—A. No, sir; I came back direct from Tyler to Pensacola.

Q. Well, about what was the length of that journey, in hours?—A. I think it is about the same thing.

Q. About thirty-two hours?—A. Yes, sir. I can not remember the exact time, but I think that is about right.

Q. As near as you can recall?—A. Yes, sir.

Q. Do you know whether Waco is nearer or more remote from Pensacola than Tyler?—A. It is more remote.

Q. How much farther is it to Waco?—A. I think it is about 122 miles.

Q. Beyond Tyler?—A. Yes, sir.

Q. Do you know the fare from Pensacola to Waco?—A. I think about \$22 and something.

Q. Do you know the length of the journey?—A. About 700 and some odd miles.

Q. I mean in hours.

The WITNESS. You mean from Tyler to Waco?

Mr. Manager OLMSTED. No; from Pensacola to Waco or from Waco to Pensacola.

A. Well, it would be about between thirty-six and thirty-eight hours, I should judge.

No cross-examination.

Mr. Manager OLMSTED. That is all, Mr. Davis. Call Mr. R. W. Sublett.

Mr. President, I desire to state that we are not through with the examination of the witness who was just on the stand, except as to these three articles of impeachment. We intend to call him later upon another article.

R. W. SUBLETT, sworn and examined.

By Mr. OLMSTED:

Q. What is your full name?—A. R. W. Sublett.

Q. Where do you live?—A. Pensacola.

Q. How long have you lived there?—A. About twenty-three years.

Q. What is your occupation?—A. Railroad ticket agent.

Q. For what company?—A. The Louisville and Nashville.

Q. The Louisville and Nashville what?—A. Railroad Company.

Q. How long have you been such ticket agent.—A. About twenty-three years.

Q. Do you know the respondent, Judge Swayne?—A. I do.

Q. Is the Louisville and Nashville the railroad by which one journeys from Pensacola to Tyler, Tex.?—A. Part of the way. You go out of Pensacola on the Louisville and Nashville Railroad as far as New Orleans.

Q. You go from Pensacola to New Orleans upon the Louisville and Nashville?—A. You do.

Q. And then on what road?—A. Then by either the Southern Pacific or the Texas Pacific.

Q. You sell through tickets from Pensacola to Tyler?—A. I do, sir.

Q. What is the rate—what do you charge for such tickets?—A. To Tyler is \$18.90.

Q. Do you also sell through tickets to Waco, Tex.?—A. Yes, sir.

Q. What is the rate from Pensacola to Waco?—A. Twenty-two dollars and sixty-five cents.

Q. State if you also sell sleeping-car berths.—A. I do.

Q. What is the rate of sleeping cars—they are Pullman cars?—A. They are; yes, sir.

Q. What is the rate for Pullman car accommodations from Pensacola to Tyler?—A. Well, I can not say exactly. The rate to New Orleans is \$2. We have a car running to New Orleans, and the rate to New Orleans is \$2. I think the rate is about \$6, though, to Tyler.

Q. From Pensacola to Tyler?—A. From Pensacola.

Q. Now, does that cover one whole section or one berth?—A. One berth.

Q. What would be the price for a section?—A. A section would be double that amount—\$12.

Q. Twelve dollars. Now, what would be the price from Pensacola to Waco?—A. About the same price; the same rate.

Q. Is the railroad rate the same now that it was in the years 1896, 1900, and 1903?—A. I think the rate is about the same, except there has been an addition of 50 cents in the last two years on account of a change of terminals of the Southern Pacific in New Orleans, and consequently a transfer of 50 cents has been added, making it 50 cents higher than it was.

Q. Do the figures which you have given include that 50 cents?—A. Yes; they include the 50 cents.

Q. Then the former rate was 50 cents less than the figures you have given?—A. Yes, sir; 50 cents less.

Q. Do you know the time of trains—the running time—between Pensacola and Tyler?—A. Well, it is about, I should say, twenty-eight to thirty hours. The connections are not very good. If the connections were absolutely close, it would be less than that; but it takes about thirty hours, I think, to make the trip.

Q. That is, the running time is about twenty-eight hours, do you say?—A. No; I do not say "the running time." It takes a passenger that long to get there.

Q. About thirty hours?—A. Thirty hours; yes.

Q. The running and waiting time?—A. Yes.

Q. What is the running and waiting time from Pensacola to Waco?—

A. If there is a good connection for Waco, you leave Pensacola, say, at noon, and you arrive at Waco the following afternoon. That makes about twenty-eight hours' run.

Q. Twenty-eight hours if you go right through.—A. Yes.

Q. Do you know Judge Swayne?—A. I do, sir.

Q. State if you have ever sold him a ticket from Pensacola to New Orleans, or Waco, or Tyler.—A. No; I do not remember to have sold the Judge a ticket to either of those points.

No cross-examination.

Mr. Manager OLMSTED. That is all. Call J. O. Jennings.

J. O. JENNINGS, sworn and examined.

By Mr. Manager OLMSTED:

Q. Where do you reside?—A. At Pensacola, Fla.

Q. What is your occupation?—A. I am a passenger-train conductor.

Q. On what road?—A. The Louisville and Nashville Railroad.

Q. Is that the railroad leading from Pensacola to New Orleans?—A. Yes, sir; that is a branch of that railroad.

Q. Do you know Judge Swayne?—A. Yes, sir.

Q. State, if you know, whether in the years 1896, 1900, and 1903, all or any of them, he held an annual pass good on the Louisville and Nashville Railroad?—A. Yes, sir; he held an annual pass good on the Louisville and Nashville Railroad; but I do not remember now during what years he traveled with me.

Q. According to the best of your recollection, would you say that he had one in 1896?—A. I think that he did.

Q. Would you say that he did, or did not, have one in 1900?—A. I can not say that he did not have one or that he did have one.

Q. What is the best of your recollection?—A. Well, I think that he did have one during 1900.

Q. And what is your recollection as to 1903?—A. I think it quite likely that he also held an annual pass.

Q. According to the best of your recollection, he had one in that year also?—A. Yes, sir.

Q. You saw the pass?—A. Yes, sir.

Mr. Manager OLMSTED. That is all.

Cross-examined by Mr. THURSTON:

Q. Your road runs from Pensacola to New Orleans?—A. Yes, sir; the L. & N. runs from Pensacola to New Orleans, but I do not run all the way there; our division runs from Pensacola to Flomaton.

Q. That is one division?—A. Yes, sir; that is the division.

Q. And at times you saw this annual pass?—A. Yes, sir; I saw this pass at different times.

Q. It was not an uncommon occurrence during those years to see annual passes on your trains, was it?—A. Nothing unusual.

Q. In fact, it is quite a common occurrence?—A. Yes, sir.

Mr. THURSTON. That is all.

Mr. Manager OLMSTED. I would state, Mr. President, that we are not questioning the right of Judge Swayne to ride on an annual pass. This evidence is simply on the point of expense. That is the point upon which we are—

Mr. THURSTON. No, Mr. President, I do not suppose that any of us would raise that question. [Laughter.]

Mr. Manager OLMSTED. It is a very proper question to raise when the party using a pass has charged the expense of the transportation to the Government.

The PRESIDING OFFICER. Are there further witnesses?

Mr. Manager OLMSTED. We have some other witnesses on this point, Mr. President, but it develops that they have not yet arrived, though I understand they are on their way here.

Mr. BACON. Mr. President, I understand it is the wish of the managers that they should not be required to proceed further this afternoon; and I therefore move that the Senate, sitting as a court of impeachment, adjourn until the regular hour to-morrow.

The motion was agreed to; and (at 3 o'clock and 55 minutes p. m.) the Senate, sitting as a court of impeachment, adjourned until to-morrow, Tuesday, February 14, 1905, at 2 o'clock p. m.

The managers on the part of the House of Representatives and the respondent and his counsel thereupon retired from the Chamber.

IN THE SENATE, *February 14, 1905.*

The hour of 2 o'clock having arrived, Mr. Platt, of Connecticut, assumed the chair.

The PRESIDING OFFICER (Mr. Platt, of Connecticut). The Senate is now sitting for the trial of the impeachment of Charles Swayne, United States judge in and for the northern district of Florida. The Sergeant-at-Arms will make proclamation.

The Sergeant-at-Arms made the usual proclamation.

The PRESIDING OFFICER. The Sergeant-at-Arms will see if the managers on the part of the House are in attendance.

The managers on the part of the House of Representatives to conduct the impeachment appeared and were conducted to the seats assigned them.

The respondent, Judge Charles Swayne, and his counsel, Mr. Higgins and Mr. Thurston, entered the Chamber and took the seats assigned them.

The PRESIDING OFFICER. The Journal of the last trial day will be read.

The Journal of the Senate sitting for the trial of the impeachment Monday, February 13, was read.

The PRESIDING OFFICER. In reference to the witness Paquet, the Presiding Officer directed the Sergeant-at-Arms yesterday to telegraph to his attending physician to know his condition at this time and to state fully. The following dispatch has been received by the Sergeant-at-Arms:

The Secretary read as follows:

NEW ORLEANS, LA., February 14, 1905.

UNITED STATES SENATE, Washington, D. C.:

Louis P. Paquet can not leave. Suffering with pneumonia.

DR. MAESTRI.

The PRESIDING OFFICER. Are the managers ready to proceed?

Mr. Manager OLMSTED. We are. I call Mr. James D. Maher.

JAMES D. MAHER sworn and examined.

By Mr. Manager OLMSTED:

Q. Mr. Maher, where do you reside?—A. In the city of Washington.

Q. What is your occupation?—A. I am assistant clerk in the office of the clerk of the Supreme Court.

Q. Of the United States?—A. Of the United States.

Q. Have you charge of the records and documents which are filed in that court?—A. I am one of the clerks in charge.

Q. State if you have the transcript of the record in the case of Florida McGuire and others against William A. Blount and others from the circuit court of appeals, fifth circuit.—A. I have.

Q. I think numbered 1202 in the said court.—A. (Producing paper.) That is the record, sir.

Q. Certified by the clerk of that court?—A. Yes, sir.

Q. Will you state what has been done with this record since it reached the Supreme Court of the United States?—A. It has been printed, sir, in this shape.

Q. Under a rule of the court?—A. It has been printed in this shape for the use of the court.

Q. Printed under the— A. Under the direction of the clerk.

Q. And under a rule of the court?—A. Under a rule of the court.

Q. State whether this—

Mr. HIGGINS. We will admit that the copy is correct and save the trouble of any examination of this kind.

Mr. Manager OLMSTED. Very well. [To the witness.] Then that book which you hold in your hand is what the Supreme Court of the United

States accepts and acts upon as the record of the evidence and documents and proceedings in that case?—A. It is.

Mr. Manager OLMSTED. That is all. [To the witness.] Will you let me have that record, please?

The record was handed to Mr. Manager Olmsted.

Mr. Manager OLMSTED. Mr. President, we now offer so much of that record as begins on page 455, as printed on the top thereof, and from there to the end, being the proceedings in the circuit court of appeals upon a motion to strike off a paper purporting to be a bill of exceptions signed by the respondent. Of course it is possible that as a matter of strict right the whole record ought to go in, but I think not. All this voluminous matter has reference to proceedings in which nobody here is interested. We simply want to prove the proceedings upon a motion to strike off the bill of exceptions signed by Judge Swayne in that case while it was pending in his court.

Mr. HIGGINS. We have no objection.

The PRESIDING OFFICER. Do the managers wish it to be read at this time?

Mr. Manager PALMER. We do, sir.

Mr. THURSTON. Mr. President, so far as we are concerned, we will waive the reading of this entire exhibit; but in making no objection to the introduction of that portion of this record which has been offered, we reserve the right to offer as a part of our case any further portions of this same record that we may desire.

Mr. Manager OLMSTED. Well, I assume that whatever right the counsel have would not be waived, but, of course, when they attempt to exercise it, it would be subject to such objection, if any, as we might have to make at that time.

I will ask, Mr. President, that the Secretary read the paper beginning at the point I have marked, and I will then indicate what other parts we should like to have read.

The Secretary read from page 455, as follows:

United States circuit court of appeals, fifth judicial circuit, at New Orleans. Florida McGuire and Matilda Caro v. William Fisher, William A. Blount, et al. No. 1202. Writ of error, United States circuit court, northern district of Florida.

1. The defendants in error move to strike the paper copied in the transcript, purporting to be a bill of exceptions because:

The said paper, though signed by the judge of circuit court a quo, in order to expedite plaintiffs in error in the perfection of their writ of error, was placed by the said judge in the hands of one E. T. Davis, one of the attorneys for complainants in error, with the direction that it should not be effective as a bill of exceptions until certain points of differences then pending between the counsels for the respective parties as to what said bill should contain should be determined by the said judge. That thereafter the attorneys for the respective parties adjusted all of such differences but two, the said E. T. Davis yielded to all of the contentions of the attorneys for defendants in error, and striking out many parts of the said alleged bill of exceptions so signed by the said judge, and omitting many pages which had been therein inserted before the said judge had signed the same, and thereupon the attorneys for the parties resubmitted the same to the said judge, and said E. T. Davis returning the paper to him in order that he might decide upon the said two contentions still open between the attorneys for the parties; that thereupon the said judge decided such contentions in favor of the defendants in error, and redelivered the said paper to the said E. T. Davis with a direction to him that it should not be used as a bill of exceptions until certain papers, covered by the said two contentions of the attorneys for defendants in error, should have been inserted therein; but that the said E. T. Davis, without inserting in or in any wise making the said papers any part of the said alleged bill of exceptions, and knowing that the said papers had not been inserted or included,

and intending not to insert them, placed the said alleged bill of exceptions with the clerk of the said court, and demanded and procured against the protest of the attorneys of the defendants in error, and the command of the judge, that the said alleged bill of exceptions should be included in and made a part of the transcript of the record which is in this court; and that the said alleged bill of exceptions does not contain the said papers ordered by the said judge to be inserted therein.

Mr. Manager OLMSTED. Mr. President, I will not ask for the further reading of that. Of course it will all be printed in the Record. I will now ask the Secretary to read—but I will state first, Mr. President, that this is offered in support of the sixth and seventh articles for the purpose of showing that the respondent was residing and transacting the business of his court at Guyencourt, in the State of Delaware.

The PRESIDING OFFICER. In support of the sixth and seventh articles?

Mr. Manager OLMSTED. In support of the sixth and seventh articles, and for the purpose of negating the allegations or averments of the respondent's answer to the effect that his absence from his district did not impede the course of justice or work disadvantage to the public.

Now, I will ask that the Secretary read the paper entitled "F," on page 468.

The Secretary read as follows:

Page 468, subheading "F:"

F.

Judge's chambers, United States district court, northern district of Florida. Charles Swayne, judge.

GUYENCOURT, DEL., 8 Mo., 26th, 1902.

W. A. BLOUNT, Esq., Pensacola, Fla.

DEAR SIR: I inclose your objections and Mr. Davis' replies in re bill of exceptions in Florida McGuire case. Also copy of letter I send to Mr. Davis, that explains the matter.

Yours, truly,

CHAS. SWAYNE.

Mr. Manager OLMSTEAD. Also the paper entitled "G."

The Secretary read as follows:

G.

AUGUST 29, 1902.

Florida McGuire v. Wm. Fisher et al.

E. T. DAVIS, Esq., City.

DEAR SIR: Inclosed please find a letter to you from Judge Swayne, which he asked me to hand to you, together with other papers contained in a letter to me, received this morning. I have written Judge Swayne objecting to his signature to the bill of exceptions without having verified or disapproved the objections which I made, and without being convinced that all of the papers used at the trial were copied into the bill of exceptions.

Yours, very truly,

W. A. BLOUNT.

(Inclosures.)

Mr. Manager OLMSTED. Now the letter marked "H."
The Secretary read as follows:

"H."

Judge's chamber, United States district court, northern district of Florida, Charles Swayne, judge.

GUYENCOURT, DEL., 8 Mo. 29th, 1902.

W. A. BLOUNT, Esq., Pensacola, Fla.

DEAR SIR: I have yours of 25th and have written Mr. Davis in this mail. Unless you agree fully to send me the bill of extns. again and I will pass on your differences.
Yours, truly,

CHAS. SWAYNE.

Mr. Manager OLMSTED. Also "I."
The Secretary read as follows:

"I."

McGuire v. Fisher et al. Judge's chamber, United States district court, northern district of Florida, Charles Swayne, judge.

GUYENCOURT, DEL., 9 Mo. 3d, 1902.

W. A. BLOUNT, Esq., Pensacola, Fla.

DEAR SIR: Yours of 29th at hand in re bill of exs. Fla. McGuire case. I had already written Mr. Davis not to use said bill until you and he agreed or I had an opportunity to pass upon your contentions. I believe I will be able to hold up the case in the court of appeals if he does not regard my request, but attempts to use the bill in its present shape.

Very truly, yours,

CHAS. SWAYNE.

Mr. Manager OLMSTED. I do not think it necessary to consume the time of the Senate by reading further. Call E. T. Davis.

The PRESIDING OFFICER. How much of this record do the managers desire to have appear in the Record—from what page to what page?

Mr. Manager OLMSTED. Beginning on page 455, about the middle, where the figures "460" appear upon the left margin—from there on to the end.

Mr. SPOONER. Mr. President, I wish to inquire, through the Chair, whether I correctly understood the managers as offering this as bearing on the question of residence—on the articles of impeachment relating to the question of residence?

Mr. Manager OLMSTED. Yes, sir.

The PRESIDING OFFICER. It bears on the question of residence, and is to rebut the claim that no inconvenience was suffered by the absence of Judge Swayne from Florida.

The portion of the record referred to is as follows:

United States circuit court of appeals, fifth judicial circuit, at New Orleans. Florida McGuire and Matilda Caro v. William Fisher, William A. Blount, et al. No. 1202. Writ of error, United States circuit court, northern district of Florida.

1. The defendants in error move to strike the paper copied in the transcript, purporting to be a bill of exceptions, because—

The said paper, though signed by the judge of circuit court a quo, in order to expedite plaintiffs in error in the perfection of their writ of error, was placed by the said judge in the hands of one E. T. Davis, one of the attorneys for complainants in error, with the direction that it should not be effective as a bill of exceptions until certain points of differences then pending between the counsels for the respective parties as to what said bill should contain should be determined by the said judge. That thereafter the attorneys for the respective parties adjusted all of such differences

but two, the said E. T. Davis yielded to all of the contentions of the attorneys for defendants in error, and striking out many parts of the said alleged bill of exceptions so signed by the said judge, and omitting many pages which had been therein inserted before the said judge had signed the same, and thereupon the attorneys for the parties resubmitted the same to the said judge, the said E. T. Davis returning the paper to him in order that he might decide upon the said two contentions still open between the attorneys for the parties; that thereupon the said judge decided such contentions in favor of the defendants in error, and redelivered the said paper to the said E. T. Davis, with a direction to him that it should not be used as a bill of exceptions until certain papers, covered by the said two contentions of the attorneys for defendants in error, should have been inserted therein; but that the said E. T. Davis, without inserting in, or in anywise making the said papers any part of the said alleged bill of exceptions, and knowing that the said papers had not been inserted or included, and intending not to insert them, placed the said alleged bill of exceptions with the clerk of the said court, and demanded and procured, against the protest of the attorneys of the defendants in error and the command of the judge, that the said alleged bill of exceptions should be included in and made a part of the transcript of the record which is in this court; and that the said alleged bill of exceptions does not contain the said papers ordered by the said judge to be inserted therein.

2. That the paper purporting to be a bill of exceptions, a copy of which is in the transcript of the record of this court, is not the same paper signed by the judge of the court below, but that the paper signed by him has, since it was signed by him, been materially altered by the said E. T. Davis, one of the attorneys for the plaintiff in error, by inserting therein certain material papers, and by omitting therefrom certain material matters; and that the paper in the transcript, purporting to be a bill of exceptions, is not the paper signed by the said judge, but has been altered as aforesaid.

3. That the said paper, purporting to be a bill of exceptions, has not been approved by the judge of the court below, and was filed in said court and inserted in the transcript of the record now on file in this court without his consent and against his express command.

W. A. BLOUNT,
A. C. BLOUNT, Jr.,
BLOUNT & BLOUNT,
Attorneys for Defendants in Error.

(Indorsement: No. 1202. Florida McGuire et al. v. William A. Blount et al. Motion of defendants in error to strike bill of exceptions. United States circuit court of appeals. Filed January 2, 1903. Charles H. Lednum, clerk. Blount & Blount, Pensacola, Fla.)

Certificate of Hon. Charles Swayne on motion to strike bill of exceptions.

United States circuit court of appeals, fifth circuit. No. 1202. Florida McGuire et al. v. William A. Blount et al. Filed January 2, 1903. United States circuit court of appeals. Filed January 12, 1903.

CHARLES H. LEDNUM, *Clerk.*

In United States circuit court, State of Florida. Florida McGuire et al. v. William Fisher et al.

I, Charles Swayne, judge of said court, do hereby certify that I have read the affidavit of William A. Blount, dated December 13, 1902, relating to the proceedings to settle the bill of exceptions in this case. That the letters attached to the same purporting to be signed by me were signed and sent by me, and that I received the originals purporting to have been sent by him, of which copies are attached to the said affidavit. That before June 16, 1902, I received from E. T. Davis, one of the counsel for plaintiffs in error in this case, a proposed bill of exceptions, and from Blount & Blount objections to the same. That I disposed of such objections on or about June 16, 1902, sustaining all of them, and directing the said Davis to make his bill of exceptions conform to the said objections. That the said Davis, in the latter part of August, presented the said bill of exceptions to me as conforming to the directions which I had given, and I, desiring to expedite the making of the said bill and assist the plaintiffs in error as much as possible in so doing, signed the same, and sent it to the said Davis by mail, I then being at Guyencourt, Del.

I, however, wrote to him that if there were any differences between him and Blount & Blount, attorneys for defendants in error, the signing of the bill by me was subject to the adjustment of such differences, and that he was not to use the same until such differences, if any, had been adjusted, and directing him that unless he and the said Blount should agree fully to return the bill of exceptions to me again and I would pass on the differences. He did so send it to me, and the said William A. Blount sent to me his objections thereto, and the said Davis his replies to such objections, and I decided as I had decided in June, 1902, that the bill did not contain all the papers which had been offered at the trial, and which should be inserted in the bill, and I returned it to the said Davis with instructions to insert the plats and protocols mentioned in the last exceptions of Blount & Blount before using the bill, and I supposed that such insertions had been made until I learned from Blount & Blount and the clerk of this court that the said Davis insisted that because he had in his possession a bill of exceptions signed by me he was entitled to use it, although it did not contain the papers which he had been instructed to insert in it and that he had procured that the clerk should insert it without such papers. The position of the said Davis with reference to the matter is shown by his letter to me, which is hereto attached, marked "Exhibit A."

In witness whereof I have hereunto signed my name and caused the clerk of said court to affix the seal thereof this December 13, 1902.

[SEAL.]

CHAS. SWAYNE, *Judge*.

A.

PENSACOLA, FLA.

Hon. CHARLES SWAYNE,
Guyencourt, Del.

DEAR SIR: After further investigation of the law I find that it is now too late to amend, change, or alter the bill of exceptions. After they are signed and filed the defendants can apply for a writ of certiorari to the circuit court of appeals, and if their exceptions are well taken the court will order such documents as they refer to to be made up and included in the record. I cite you *Mich. Ins. Bank v. Elder* (143 U. S., 298), and also *Sutherland v. R* (57 Fed. Rep., 467).

Yours, very truly,

E. T. DAVIS.

(Indorsement:) No. 1202. Florida McGuire et al. v. William A. Blount et al. Certificates of Hon. Charles Swayne on motion to strike bill of exceptions. United States circuit court of appeals. Filed January 2, 1903. Charles H. Lednum, clerk.

Affidavit of W. A. Blount on motion to strike bill of exceptions.

United States circuit court of Appeals, fifth circuit. No. 1202. Florida McGuire et al. v. William A. Blount et al. Filed January 2, 1903.

United States circuit court of appeals. Filed January 12, 1903.

CHARLES H. LEDNUM, *Clerk*.

United States circuit court of appeals, fifth judicial circuit, at New Orleans. Florida McGuire and Matilda Caro v. William Fisher, William A. Blount, et al. No. 1202.

Before the subscriber personally appeared William A. Blount, who, being duly sworn, says that he was one of the counsel for the defendants in error in this cause on the trial thereof in the court below, that the said trial took place on the — day of —, 1902, before a jury, which resulted in a verdict for the defendants, defendants in error herein; that in April, 1902, E. T. Davis, one of the attorneys for the plaintiffs below, plaintiffs in error herein, presented to affiant a proposed bill of exceptions in this case; that on April 23 affiant delivered to the said Davis objections to such proposed bill, upon the ground that more than thirty documents offered on the trial had been omitted, including certain plats and protocols. A copy of the said objections is hereto attached and marked "Exhibit A." The plats omitted are those mentioned in objection twelve (12), and the protocols in objection eighteen (18). That thereafter, on May 28, 1902, the said E. T. Davis presented to affiant an amended proposed bill, in answer to which the affiant filed objections upon the ground that there were still many papers and documents, more than twenty in number, which were omitted, including the plats and protocols mentioned. A copy of said objections

is hereto attached and marked "Exhibit B." The plats mentioned are included in objection nine (9), and the protocols in objection twelve (12).

On June 16, 1902, the said judge heard both parties, as to the said objections, and sustained them all, and ordered that the papers objected to as omitted should be inserted in the bill of exceptions; that thereafter the said E. T. Davis presented an amended bill of exceptions to which the affiant objected on the ground that a large number of papers and documents, including the plats and protocols above mentioned, were not, but should be, included, and that certain language therein was erroneous and should be changed. A copy of such objections is hereto attached and marked "Exhibit C" and made a part hereof. The plats and protocols are referred to in the third (3) and fourth (4) objections from the last.

Upon the trial there had been offered an original Spanish protocol, which was read in evidence before the jury. Instead of making a copy of this the proponent of the said bill had caused a translation into Spanish from the English translation, also used on the trial, to be made and inserted in the record. The fifth (5) objection from the last in Exhibit C refers to this.

That without further submission of the bill of exceptions to the affiant, or any direction from the defendants in error, the said Davis transmitted the proposed bill of exceptions to the Hon. Charles Swayne, who was then in Guyencourt, Del. Affiant, after the transmission of the proposed bill of exceptions to the judge and after affiant's receipt of replication (so called) by the said Davis to affiant's objections, sent to the said Davis a letter dated August 25, 1902, suggesting that the bill of exceptions should have been submitted to him before being sent to the judge. A copy of this letter is attached as Exhibit D, and copy of the letter to the said judge, transmitting a copy thereof, is attached at Exhibit E.

Thereafter the said judge signed the proposed bill of exceptions as presented, and returned the same to the said Davis on August 26, 1902, and wrote to the said Davis a letter which he transmitted to affiant to be handed to the said Davis, which was transmitted by affiant to the said Davis on the day of its receipt, to wit: August 29, 1902. A copy of the said judge's letter to affiant is hereto attached and marked "Exhibit F," and a copy of affiant's letter to said Davis is attached and marked "Exhibit G."

Affiant has not a copy of the said judge's said letter to the said Davis, but it said substantially that the bill of exceptions was signed by the said judge subject to an adjustment of any differences between the said Davis and affiant touching the contents of the said bill.

The said Davis has, of course, the letter and can produce it.

On or about September 1, 1902, affiant received a letter from the said judge, dated August 29, 1902, informing affiant that he had written to the said Davis that unless he and affiant agreed fully to send the bill of exceptions again to him (the said judge), and that he would pass on the differences between affiant and the said Davis. A copy of said letter is hereto attached and marked "Exhibit H." Affiant has not, of course, a copy of letter to the said Davis, but the said Davis can produce it. And affiant also received, about September 5, 1902, a letter from the said judge, dated September 3, 1902, which is hereto attached, marked "Exhibit I."

Thereafter, on September 4, 1902, the said Davis brought to affiant the said proposed bill of exceptions, with the request that he and affiant should go over and endeavor to adjust their various contentions. After going over the bill the said Davis yielded to all the objections of the affiant except two, which related to the plats and protocol before mentioned. He thereupon changed certain parts of the bill of exceptions as it then stood by striking out parts thereof, as is shown by his letter to the said judge dated September 5, 1902, attached hereto as Exhibit J. The said Davis proposed to submit these two matters to the judge, to which affiant consented, although in June, 1902, the judge had decided that these plats and protocols should be inserted in the bill of exceptions. Accordingly, the said Davis sent the bill to the said judge, who was then at Guyencourt, and affiant wrote on September 5 to said judge a letter, a copy of which is attached and marked "Exhibit K." A copy of the objections mentioned in the letter is attached and marked "Exhibit L." Upon the receipt of the proposed bill of exceptions the said judge decided that the plats and protocols heretofore mentioned should be inserted in said bill, and so wrote to affiant in a letter dated September 12, 1902, in which he said that he had "returned record to Mr. Davis, with instruction to insert the plats and protocols before using it." The said letter is hereto attached as Exhibit M. Affiant, of course, has not the letter to the said Davis, but he, the said Davis, can produce it. Affiant attaches copies of two other letters written by him to said Davis September 2, 1902, and September 5, 1902, marked "Exhibits X, Y."

That upon the receipt of the said bill of exceptions the said Davis without inserting the said plats and protocols therein, placed the same in the hands of the clerk of

the circuit court, and demanded that the same should be copied as it stood in the transcript, although he knew that it did not contain the said plats and protocols, and although affiant protested to him, the said Davis, against the copying of the said bill of exceptions until the said plats and protocols were inserted; and the said clerk copied the said transcript of the bill of exceptions, which is before this court, in its state as altered, after the said judge had signed the same, and without the insertion of the said plats and protocols; such copying being done against the protest of the affiant. The said plats and protocols have not been inserted in the said bill of exceptions, and are not now in the transcript of the record before this court.

W. A. BLOUNT.

Sworn to and subscribed before me this 13th day of December, A. D. 1902.

[SEAL.]

A. C. BINKLEY, *Notary Public*.

A.

In United States circuit court, northern district of Florida. Florida McGuire and Matilda Caro v. William Fisher et al. Objections to bill of objections proposed by plaintiffs in this suit.

It will be remembered that this case went off on a direction of a verdict by the judge, and in order that it may be properly reviewed the court above must have all the testimony given upon the trial below before it, as otherwise it would be unable to tell whether the court was justified in its peremptory direction or not.

There are omitted from the bill of exceptions the following papers—possibly others—but the following papers upon the face of the proposed bill of exceptions to have been offered and yet are not set out in the bill. The defendants insist that each and every one of them shall be set out in extenso, to wit:

1. Original Spanish will of Gabriel de Rivas and the probate thereof.
2. Certified copy in Spanish of such will and probate.
3. Translation of such will and probate.
4. Original Spanish proceedings by Maria Morena for the sale of Edward Towns & Co. of a lot in the city of Pensacola.
5. Certified copy in Spanish of such proceedings.
6. A translation of such proceedings.
7. Original Spanish proceedings showing the sale of the property in controversy.
8. A translation thereof in English.
9. Page 332 of Book A of the proceedings of the commissioners for the settlement of land claims in West Florida.
10. Page 333 of the same book.
11. Statement by Joseph E. Caro, keeper of the public archives, under his hand and seal, being an abstract of the property in controversy.
12. The plats certified by Joseph E. Caro, keeper of such archives, of the lands confirmed by the commissioners, including the land in controversy.
13. Page 103, volume 4, American State Papers.
14. Act of Congress, April 22, 1826, page 156, vol. 4, U. S. Statutes at Large.
15. Certified copy of deed from Gregorio Caro to James Fitzsimmons, Samuel Smythe, and John Chabeaux.
16. Certified copy of the deed from James Fitzsimmons to John Chabeaux.
17. Certified copy of deed of partition between John Chabeaux, Louis Doquemil de Morant, and Laurent Millaudon.
18. The protocols in the original Spanish, ten or twelve in number, found with the protocol showing the testamentary proceedings divesting the property in controversy out of Maria Moreno, executrix, and vesting it in Gregorio Caro, such originals having been offered, together with the other papers above mentioned.
19. Spanish grant to Gabriel de Rivas of the property in controversy, with the map or plan annexed thereto.
20. The plan or map of the new city of Pensacola, made by George E. Chase, offered in evidence.
21. The map and plan of the new city of Pensacola, made by Harding & Lee, offered in evidence.
22. Certified copy of the petition of A. V. Caro to the circuit court of Escambia County, Fla., to award to him the property known as the "Ahrens property."
23. Decree under such petition.
24. Certified copy of bill in chancery in Escambia County circuit court, in the case of W. H. Davidson et al. v. J. C. Peterson et al.
25. Answer in the same case.
26. Decree in the same case.

27. Deed from Runyan heirs to Florida McGuire.
28. The various deeds deraigning the title from Smythe, Chabaux, and others to the trustees of the Pensacola City Company.
29. The deed from the said trustees to the Pensacola City Company, a corporation.
30. The various deeds introduced in evidence by Thomas C. Watson, William A. Blount, and William Fisher, showing deraignment of title to portions of the land in controversy from the Pensacola City Company to them, and showing the instruments under which they claimed.

BLOUNT & BLOUNT,
Attorneys for William Fisher and Others.

B.

In United States circuit court, northern district of Florida, at Pensacola. Florida McGuire and Matilda Caro v. William Fisher et al.

The defendants make the following objections to the bill of exceptions presented to them through their attorneys, Blount & Blount, on May 28, 1902, to wit:

1. The abstract mentioned on page 22, made by J. E. Caro, should be inserted in the record. The statement that this was not produced is not correct; it was produced, offered in evidence, and is now in the hands of the surveyor-general.
2. The will and probate of Gabriel de Rivas mentioned on page 73 was produced, offered in evidence, and should be in the record. It is now in the hands of the surveyor-general.
3. The proceedings relating to the sale of the lot in 1808 by Maria Moreno was produced and offered in evidence, and should be in the record. It is mentioned on page 96 of the record. It also is with the surveyor-general.
4. On page 139 is a translation of the proceedings to sell this tract of land. It purports, however, in the bill of exceptions to be proceedings to sell a lot of land mentioned, and which was actually sold in 1808.
5. Proceedings mentioned on page 195, being proceedings by Maria Moreno before the Spanish governor for the sale of these particular lands, as offered in the original, and should be in the bill of exceptions. It is in the hands of the surveyor-general.
6. On the same page the bill of exceptions purports to set out a translation of these proceedings, but it is not set out.
7. Pages 332 and 333 of Book A of commissioners' proceedings mentioned on page 196 of the bill of exceptions, was produced, offered in evidence, and read to the jury, and should be in the bill of exceptions. This book is in the possession of the surveyor-general.
8. The original abstract made by J. E. Caro, mentioned on page 196 of the bill of exceptions, was produced in evidence and read to the jury, and should be in the bill of exceptions. It is with the surveyor-general.
9. The plats by J. E. Caro of confirmed grants were produced, offered in evidence, and exhibited to the jury, and should be in the records. They are referred to on page 196 of the bill of exceptions. They are with the surveyor-general.
10. The confirmation to Chabeaux, shown on page 103, volume 4, American State Papers, was produced, offered in evidence, and read to the jury, and should be in the bill of exceptions. It is referred to on page 196 of the bill of exceptions.
11. The act of Congress of April 22, 1826 (4 Stat. L., p. 158), was produced, offered in evidence, and read to the jury, and should be in the record. It is easily accessible. It is referred to on page 196 of the bill of exceptions.
12. On page 203 appears a statement that Mr. Blount, counsel for defendants, offered a protocol and gave the names of certain notaries. This is entirely incorrect. There were eight or ten protocols offered and exhibited to the jury. Mr. Blount did not give the names of the notaries, but gave Thomas Marshall and perhaps Joseph Marshall as the names of beneficiaries under proceedings contained in the protocol. They were offered as showing the authenticity of the proceedings relating to this particular tract of land, because found at the same place, signed in large part by the same persons, and having the same general appearance. They should be in the bill of exceptions.
13. The George E. Chase plan, referred to on page 211, was offered in evidence and exhibited to the jury and should be in the bill of exceptions.
14. The Harding & Lee plan, referred to on page 202 of the bill of exceptions, was offered in evidence and exhibited to the jury and should be in the bill of exceptions.
15. The agreement with Caro, read by Mr. Fisher to the jury, was offered in evidence and should be in the bill of exceptions. It is referred to on page 213 of the bill of exceptions.

16. The attorneys for the defendants have not verified the several documents and the testimony set forth in the bill of exceptions, preferring to postpone this onerous task until all the documents which should be in the record are inserted in the bill of exceptions.

BLOUNT & BLOUNT,
Attorneys for Defendants.

C.

In United States circuit court, northern district of Florida, at Pensacola. Florida
McGuire et al. v. William Fisher et al.

The defendants except to the bill of exceptions as presented to them July —, 1902, for the following reasons:

Page 21. Before the words "went into possession," about the middle of the page, should be inserted the word "never."

Page 24. The record in the suit of A. V. Caro v. Samuel Jardon and N. Thurston was offered in evidence, but is not in the record. It can be found in the office of the clerk of the circuit court of Escambia County, Fla.

Pages 35 to 41, inclusive, purport to be copies of bill of complaint, but are copies of final decree.

Pages 53 to 58 purport to be a deed, but are an answer in chancery.

Page 66. The deed from the Pensacola City Company to Charles Ahrens is not, but should be, in the record.

Page 86. There should be this statement inserted: "It was agreed between the attorneys for the plaintiffs and for the defense of R. L. Scarlett, surveyor-general of the State of Florida, that the various Spanish documents introduced by each side came from his custody as surveyor-general of the United States for said State, and that he was the proper custodian thereof."

Page 75. The paper purporting to be a bill and answer is not such, but an order appointing a receiver.

Page 168. The date "1873" should be changed to "1783."

Page 215. The proceedings of the land commissioners, though offered in evidence, are not set out in the record.

Pages 120 and 121. These constitute a deed from Maria Moreno to Townes & Co., and should not be interpolated between two parts of the proceedings by Maria Moreno to sell the property.

Page 122 should follow page 120 without the written caption.

Pages 115 to 125. The translation on these pages (eliminating 120 and 121) is omitted.

Pages 127 to 157. The paper set out on these pages is not a copy of the original offered in evidence, but is a translation from the English translation offered in evidence back into Spanish, having been evidently made by some person in employ of plaintiffs in error. We insist upon a copy of the original.

Page 224. The whole of the plats and explanations, etc., of Joseph E. Caro are not in the record, but should be.

Page 239. Not only were the protocols relating to Thomas Marshall and Joseph Marshall offered, but eight or ten others, which are not, but should be, in the bill of exceptions.

Page 314. The word "proved" should be stricken out and the word "claimed" inserted.

Page 319. The words "that land" should be changed to "the land in controversy."

BLOUNT & BLOUNT,
Attorneys for Defendants.

D.

AUGUST 25, 1902.

Florida McGuire and Matilda Caro v. William Fisher et al.

E. T. DAVIS, Esq., City.

DEAR SIR: I have been over your replication to the exceptions of the defendants in this case to the bill of exceptions. It is impossible for me, without having the bill of exceptions in my hands, to say whether the amendments to which you allude in your replication have been made in such form as to meet my former objections. For instance, in the second, third, fourth, fifth, sixth, and other replications you say that documents which I required to be inserted have been inserted in their proper

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place in the record. Of course I should have before me the bill of exceptions, so as to see whether, in my opinion, the objections have been met. There are other matters which the judge will have to dispose of because at issue between us, and I should have the bill of exceptions in order to refer to the pages where the omissions occur. For instance, your fourteenth and fifteenth replications say that all that were offered and read are set out in the record in their proper place. I should have before me the bill of exceptions in order to point to the judge the particulars of my objections.

I see no way of settling the matter except to submit to me the bill of exceptions before submitting it to the judge.

I return one of the copies of replication which you handed me and retain the other, as I presume you intended.

Yours, very truly,

W. A. BLOUNT.

Inclosure.

E.

AUGUST 25, 1902.

Florida McGuire and Matilda Caro v. Wm. Fisher et al.

HON. CHAS. SWAYNE, *Guyencourt, Del.*

DEAR SIR: Mr. E. T. Davis has presented to me a replication, as he calls it, to the exceptions which I made to the bill of exceptions. I beg to inclose copy of letter which I have written him, which explains my position in the matter.

Yours, very truly,

W. A. BLOUNT.

Inclosure.

F.

[Judge's chambers, United States district court, northern district of Florida. Charles Swayne, Judge.]

GUYENCOURT, DEL., 8 Mo. 28th, 1902.

W. A. BLOUNT, Esq., *Pensacola, Fla.*

DEAR SIR: I inclose your objections and Mr. Davis's replies in re bill of extns. in Fla. McGuire case. Also copy of letter I send to Mr. Davis that explains the matter.

Yours, truly,

CHAS. SWAYNE.

G.

Florida McGuire v. Wm. Fisher et al.

AUGUST 29, 1902.

E. T. DAVIS, Esq., *City.*

DEAR SIR: Inclosed please find a letter to you from Judge Swayne, which he asked me to hand you, together with other papers contained in a letter to me, received this morning. I have written Judge Swayne, objecting to his signature to the bill of exceptions without having verified or disproved the objections which I made, and without being convinced that all of the papers used at the trial were copied into the bill of exceptions.

Yours, very truly,

W. A. BLOUNT.

Inclosures.

H.

Judge's chambers, United States district court, northern district of Florida. Charles Swayne, judge.

GUYENCOURT, DEL., 8 Mo. 29th 1902.

W. A. BLOUNT, Esq., *Pensacola, Fla.*

DEAR SIR: I have yours of 25th, and have written Mr. Davis in this mail. Unless you agree fully to send me the bill of exceptions again, and I will pass on your differences.

Yours, truly,

CHAS. SWAYNE.

I.

McGuire v. Fisher et al., judge's chambers, United States district court, northern district of Florida. Charles Swayne, judge.

GUYENCOURT, DEL., 9 Mo. 3d, 1902.

W. A. BLOUNT, Esq., Pensacola, Fla.

DEAR SIR: Yours of 29th at hand in re bill of exceptions Florida McGuire case. I had already written Mr. Davis not to use said bill until you and he agreed or I had an opportunity to pass upon your contentions. I believe I will be able to hold up the case in the court of appeals if he does not regard my request, but attempts to use the bill in its present shape.

Very truly, yours,

CHAS. SWAYNE.

J.

[E. T. Davis, attorney and counselor at law, No. 14½ E. Government street.]

PENSACOLA, FLA., 9/5/1902.

HON. CHARLES SWAYNE, Guyencourt, Del.

DEAR SIR: I was away from the city when your letter requesting me to submit the bill of exceptions to Mr. Blount and then forward them to you came, in fact after receiving the bill of exceptions I went immediately and filed them, and went over to New Orleans to prepare the writ of error, and after that being done I made my return with the expectation of having it perfected, but upon receiving your letter I saw that the matter had taken a very unexpected turn, and I then proceeded to do as the court had requested. This is the cause of my delay in answering your letter. I deeply regret this delay, and hope that we will not be debarred by it.

I am, yours, very truly,

E. T. DAVIS.

P. S.—You will find the exceptions now made by defendants, also replied to, in parenthesis, which was before you, and which replication you will recognize as the one before you when you approved the bill. You will find that no changes have been made in the bill except the word "proved" and the words "that land," and rather than delay I submitted to Blount's contention.

X.

SEPTEMBER 2, 1902.

Florida McGuire et al. v. William Fisher et al.

E. T. DAVIS, Esq., City.

DEAR SIR: I have a letter from Judge Swayne, under date of 29th ultimo, in which he says that he has written you that unless we can agree fully as to the bill of exceptions in this case to return it to him and he will pass on our differences. I will be glad to have the bill of exceptions before it is returned to him.

Yours, very truly,

W. A. BLOUNT.

Y.

Florida McGuire et al. v. William Fisher et al.

E. T. DAVIS, Esq., City.

DEAR SIR: I herewith beg to return you the bill of exceptions handed to me yesterday, with my objections thereto. You will note that the changes which you have made caused an elimination by me of all objections but two.

Yours, very truly,

W. A. BLOUNT.

Inclosure.

K.

Florida McGuire et al. v. Wm. Fisher et al.

SEPTEMBER 5, 1902.

HON. CHAS. SWAYNE, Guyencourt, Del.

DEAR SIR: Mr. E. T. Davis brought to me yesterday the bill of exceptions in this case. He and I went over it, and he has yielded to all of my objections except those

which he has numbered 14 and 15 in his "replication," and which are to be found on pages 234 and 239. For the purpose of having this before you, I repeat them, and inclose you a copy.

As I have said before, this writ of error is from a judgment which was rendered upon a verdict directed by the court, and it is necessary that all testimony that went before the jury should go into the record.

The attacks made by the plaintiff upon the Spanish document divesting the title out of Maria Moreno as executrix and vesting it in Gregorio Caro were, in general terms, twofold, the first relating to the form and the second to the authenticity of that document. For the purpose of showing the authenticity, the plats embraced in exception 14 and the protocols embraced in exception 15 were offered by us, the purpose being to show that the instrument which we offered was not fabricated, but that they were found in the same possession, and in the case of the plats under the same cover, with other papers of like kind signed by the same people, and thereby to furnish one of the strongest evidences of authenticity to the evidence that other papers relating to large tracts of land in the same locality were treated exactly as this was. This is exceedingly important evidence, and necessarily should go in.

There is no question about their having been offered. You will recollect that the plats were all bound together, and Mr. Davis has simply selected out one and left the others. If one was offered, necessarily the others were. In fact, they were all offered, and the attention of the jury was called to several of them.

So with the protocols. The attention of the jury was called to the fact that the signatures of persons appearing in these protocols were the same, in many instances, as the protocol upon which we depended for our title; that the appearances were the same, and that the custody of the surveyor-general was the custody in which were found other instruments relating to the devolution of estates in probate matters.

We understand, of course, that it will be a matter of considerable expense to the plaintiffs to put these things in, but that consideration has never been allowed to stand in the way of a presentation of the full and exact bill of exceptions for the purpose of demonstration to the court above of all the facts presented to the court below. Mr. Davis has had time to have these inserted since May, when this bill of exceptions was presented to me, and when I formally made the same objections that I do now, that these papers were not in the record, and has had since June the benefit of your ruling that though they were with the surveyor-general they must be inserted in the record by the plaintiff in error who was presenting the case to the appellate court.

Yours, very truly,

W. A. BLOUNT.

(Inclosure.)

L.

In United States circuit court, northern district of Florida, at Pensacola. Florida
McGuire and Matilda Caro v. William Fisher et al.

The defendants except to the bill of exceptions as presented to them September 4, 1902, for the following reasons:

Page 224. The whole of the plats, exceptions, etc., of Joseph Caro is not in the record, but should be.

Page 239. Not only were the protocols relating to Joseph Marshall and Thomas Marshall offered, but eight or ten offered, which are not, but which should be, in the bill of exceptions.

BLOUNT & BLOUNT,
Attorneys for Defendants.

M.

Judge's chambers, United States district court, northern district of Florida.
Charles Swayne, judge.

GUYENCOURT, DEL., 9 Mo. 12th, 1902.

W. A. BLOUNT, Esq., Pensacola, Fla.

DEAR SIR: The record in the Florida McGuire case came on 8th, just as I was leaving for Asbury Park; also your letter. I returned record to Mr. Davis by next mail with instructions to insert the plats and protocols before using it. I trust he will be able to get it ready in time, for I believe it will save all parties much trouble if the court of appeals can pass on the matter now.

Very truly, yours,

CHAS. SWAYNE.

(Indorsed:) No. 1202. Florida McGuire v. Wm. A. Blount et al. Affidavit of W. A. Blount on motion to strike bill of exceptions, United States circuit court of appeals. Filed January 2, 1902. Charles H. Lednum, clerk.

Demurrer and answer to motion to strike.

United States circuit court of appeals, fifth circuit. No. 1202. Florida McGuire et al. v. Wm. A. Blount et al. Filed January 20, 1903.

United States circuit court of appeals. Filed January 23, 1903.

CHARLES H. LEDNUM, *Clerk.*

United States circuit court of appeals, fifth circuit. Florida McGuire et al. v. Wm. A. Blount et al. No. 1202. Demurrer and answer.

Now comes the plaintiffs in error, by their undersigned attorneys, and demur to the motion of defendants in error to strike bill of exceptions from the record, and for cause of demurrer say:

First. That said motion is illegal and unauthorized by the practice of this court.

Second. That the transcript of the record from the circuit court, duly certified by the clerk, can not be contradicted, varied, or extended by affidavit in this court.

Third. That ex parte affidavits are not admissible to show falsity in the transcript.

Fourth. That the motion does not specify to which one of the twenty-five bills of exceptions taken by plaintiff it is directed.

Fifth. That the bill of exceptions, after having been signed by the presiding judge of the lower court, became a part of the record, and can not be altered, changed, or added to by the said judge thereafter.

Sixth. That the certificate of the clerk of the lower court appended to the record is full and complete.

Seventh. That said motion does not state or indicate what documents have been omitted from the record, nor does it state what document or papers have been improperly included therein, or what material changes have been made in the bills of exceptions signed by the judge of the lower court and appearing in the record herein.

Wherefore they pray that this demurrer be sustained and plaintiff's motion denied with costs.

E. HOWARD McCaleb,

JAMES WILKINSON,

E. T. DAVIS.

Attorneys for Plaintiffs in Error

And should said demurrer be overruled, and not otherwise, then for answer to said motion made by defendants in error the plaintiffs in error say that the facts stated in said motion are erroneous and untrue, as will more fully appear by the affidavit of E. T. Davis and the exhibits attached thereto, here referred to as part hereof.

That the omitted documents and papers referred to in said motion are not in the custody of the clerk of the lower court, were not marked "filed," and no certified copies thereof were left with the clerk, as appears from his statement to be found on page 344 of the printed record of this cause.

Wherefore they pray that plaintiffs' motion may be denied with costs.

E. HOWARD McCaleb,

JAMES WILKINSON,

E. T. DAVIS,

Attorneys for Plaintiffs in Error.

(Indorsement:) No. 1202. U. S. circuit court of appeals, fifth circuit. Florida McGuire et al. v. Wm. A. Blount et al. Demurrer and answer to motion to strike. E. Howard McCaleb, Jas. Wilkinson, E. T. Davis, attorneys for plaintiffs in error. Filed Jan. 20, 1903. Charles H. Lednum, clerk.

Motion to dismiss bill of exceptions—Traverse of E. T. Davis.

United States circuit court of appeals, fifth circuit. No. 1202. Florida McGuire and Matilda Caro, plaintiffs in error, v. W. A. Blount and William Fisher et al., defendants in error. Filed January 20, 1903.

United States circuit court of appeals. Filed January 23, 1903.

CHARLES H. LEDNUM, *Clerk.*

United States circuit court of appeals, fifth circuit. Florida McGuire et al., plaintiffs, in error, v. William A. Blount et al., defendants in error. No. 1202. Error to the United States circuit court, northern district of Florida.

E. T. DAVIS, being duly sworn, deposes and says:

That the allegation in the first paragraph of the motion to strike out exceptions of plaintiffs in error, made by W. A. Blount, esq., attorney for defendants in error, viz: "That the bill of exceptions was placed by the Hon. Charles Swayne, judge, in the hands of E. T. Davis, one of the attorneys for the complainants, with the instructions that it should not be effective as a bill of exceptions until certain points of difference then pending between the counsel for the respective parties as to what said bill should contain should be determined by the said judge" is erroneous and a misinterpretation of the facts—as will more fully appear by a copy of the letter received by affiant from the Hon. Charles Swayne, dated the 26th day of August, 1902, herewith filed as part hereof, marked 'Exhibit A.'"

Affiant further says that after receiving the bill of exceptions and the letter marked "Exhibit A" by mail from the Hon. Charles Swayne, judge, he immediately filed the said bills of exceptions with the clerk of the circuit court of the United States for the northern district of Florida, proceed to New Orleans to get the application for a writ of error, bond citations in error, and assignments of error from E. Howard McCaleb, esq., one of the attorneys for plaintiffs in error, who was charged with the preparation of them, and upon his return to Pensacola, Fla., received a letter from W. A. Blount, esq., and another from the Hon. Charles Swayne, and that W. A. Blount rang affiant up over the telephone and stated that Judge Swayne had requested affiant to submit the bills of exceptions to him, W. A. Blount, esq., and he asked affiant to bring the bills of exceptions to his office. Thereupon affiant, as a matter of courtesy, applied to the clerk of the United States circuit court, obtained the bills of exceptions, and took them to the office of W. A. Blount, esq.

That affiant stated to W. A. Blount, esq., that the bills of exceptions had been filed on the receipt of them from Judge Swayne, and that they could not be changed or altered after they had been settled and signed by the judge.

Affiant further says that W. A. Blount, esq., took the bills of exceptions, and, again comparing them with his objections to the bills of exceptions which were before the Hon. Charles Swayne, when he signed the same; and he, the said W. A. Blount, esq., struck out the name of "Chardon," appearing in the bills, and inserted in lieu thereof the name "Jaudon" in the documents offered by defendants in the proceedings and record in the suit of A. V. Caro v. Jaudon and Nathaniel Thurston for wages; and on page 84, following the name of R. L. Scarlett, he, the said W. A. Blount, esq., added "surveyor-general of the United States," and the word [word] "claimed" was inserted for the word "proved" in the testimony of A. C. Blount, and the words "that land" were stricken out and the words "the land in controversy" were inserted, the same being in the testimony of William Fisher; that all of said corrections and insertions in said bills of exceptions were made by the said W. A. Blount, esq., and that affiant considered them immaterial and made no objection thereto.

Affiant further says that the changes made in the words were done by the said W. A. Blount, esq., and that he stated to W. A. Blount, esq., at the time that he had made up the bills of exceptions according to the stenographic notes, and that in the replication submitted by affiant to the objections urged by W. A. Blount, esq., attorney for defendants in error—all of which Judge Charles Swayne had before him in answer to the said objections to the bills of exceptions at the time he considered, settled, and signed the same—and that affiant had left it entirely with the judge to decide, as he considered them immaterial.

Affiant further says that these were all the changes made in the record, and the statement that affiant yielded to all of the contentions of the defendants in error in striking out many parts of the alleged bills of exceptions and omitting many pages which had been inserted before the said judge signed the same is erroneous, not in accordance with the facts, and untrue.

Affiant further says that no changes were made in the record whatever, except those which had been mentioned above, and these were made by W. A. Blount, esq., attorney for defendants in error, at his instigation, request, and solicitation, and without any suggestion whatever upon the part of affiant, except as above stated.

That he had left it entirely with the judge when he signed the bills of exceptions, and affiant considered them immaterial.

Affiant further says that after W. A. Blount, esq., attorney for defendants in error, had compared the bills of exceptions with his objections, that he stated to affiant that Judge Charles Swayne had requested the bills of exceptions sent back to him, and affiant replied then and there that he would not do so, or consent to their being returned to the judge, as the bills and exhibits attached had been filed, were then part of the records of the court, to which W. A. Blount, esq., then and there replied: "Tell the clerk that Judge Swayne has requested it sent back to him," which message affiant delivered when he returned the bills of exceptions to the clerk in his office.

Affiant further says that he did not return the bills of exceptions to Judge Charles Swayne, then absent from the circuit, but absolutely declined and refused so to do.

Affiant further says that on the following day W. A. Blount, esq., attorney for defendants in error, served affiant with objections—two in number—to the bills of exceptions, the same being the same objections which had by him before been made, and which objections were submitted to and were before the Hon. Charles Swayne, judge, with replication made by affiant to same, when he, the said judge, signed the bills of exceptions, the grounds of said objections and the reasons in said replication being fully set forth therein. A copy of said replication is hereto attached as part and marked "Exhibit B."

Affiant further says that, upon receipt of the objections of W. A. Blount, esq., attorney for defendants in error, he ascertained that the deputy clerk had again returned the bills of exceptions to Hon. Charles Swayne.

Affiant further says that he suspected that these attempts were made by counsel for defendants in error to defeat the writ of error sued out by plaintiffs in error, and that plaintiffs in error had only a few days in which to file their application for writ of error, and to obtain the necessary writ, citation, and bond, and in order to meet defendants in error on every issue, prepared a replication to the objections of W. A. Blount, esq., and forwarded the same to the Hon. Charles Swayne, judge, a copy of which replication is hereto annexed as part hereof, marked "Exhibit C."

Affiant further says that he immediately proceeded to Huntsville, Ala., with his application for writ of error, the necessary writ, citations in error, bond, etc., and had the same approved and signed by the Hon. David Shelby, United States circuit judge for the fifth circuit, who was the only judge within the circuit at the time, and that he, affiant, returned to Pensacola, Fla.; and had the same, after obtaining the signature of the judge, properly filed in the United States circuit court.

Affiant further says that several days after the application for writ of error, order, writ, citation, bond, assignment of error, etc., had been filed he received a letter from the Hon. Charles Swayne to include in the bills of exceptions the documents referred to in the objections of Messrs. Blount & Blount, attorneys for defendants in error.

Affiant further says that he, upon filing of the papers pertaining to the writ of error, insisted upon F. W. Marsh, clerk of the court, making out the transcript of the record, and he, the said Marsh, stated to affiant that he had directions from W. A. Blount, esq., and also from Judge Swayne, not to make out said transcript, and thereupon affiant stated to said Marsh that unless he did so without delay affiant would take the necessary steps to compel him so to do.

Affiant further says that on the following day he received a letter from W. A. Blount, esq., a copy of which is hereto attached and marked "Exhibit E."

Affiant further says that the direction to insert the plats and protocols referred to by Messrs. Blount & Blount, attorneys for defendants in error, in their objections, was made by the Hon. Charles Swayne, after the papers relative to the writ of error had been signed, approved, and filed in this court, as well as the threatening letter of W. A. Blount, esq., to him, referred to.

Affiant further says that the bills of exceptions contained in the transcript of the record in this court are the same bills of exceptions signed by the Hon. Charles Swayne, judge of the lower court, and that the statement that "since it was signed by him it has been materially changed and altered by E. T. Davis, one of the attorneys for plaintiffs in error, by inserting therein certain material papers," is erroneous and untrue.

Affiant further says that it is not true that certain material papers have been omitted from the record, but under the most trying circumstances and attempts made to defeat affiant in making up and obtaining his bills of exceptions he succeeded, after a long interval of five months, in finally making a complete record of the case, and that the transcript contains a true and perfect copy of the bills of exceptions, signed, sealed, and approved by the Hon. Charles Swayne, judge of the court below, and that the same have not been altered or changed in any way, with the exception of the immaterial alterations made, as above stated, by W. A. Blount, esq., in his office.

Affiant further says that the statement that the bills of exceptions were filed without the consent of Judge Swayne is erroneous and untrue.

Affiant further says that the statement the bills of exceptions were filed against the express command of said Charles Swayne, judge, is likewise erroneous and untrue.

E. T. DAVIS.

Sworn to and subscribed before me this 20th day of January, 1903, in the city of New Orleans, La.

[SEAL.]

ARTHUR B. LEOPOLD,
Notary Public.

Supplement traversing the affidavit of W. A. Blount.

STATE OF FLORIDA, *Escambia County*:

Affiant further says that it is true that, during the month of April, 1902, that he did present to W. A. Blount a bill of exceptions, and that there were many documents offered in evidence, which the said bill did not contain. The reason why it did not contain a copy of said documents was because none of the documents offered in evidence by the defendants in error at the trial were filed in the court or copies thereof filed or left as of record in said case, and that affiant was unable to obtain copies.

Affiant further says that, upon the objection of W. A. Blount to his bill of exceptions, he requested of W. A. Blount to furnish him with the documents, which had been offered by defendants in error, and the said W. A. Blount and Wm. Fisher did furnish to affiant certain documents, all of which affiant copied and included in his bill of exceptions, and upon the completion thereof, submitted the bill of exceptions to W. A. Blount.

Affiant further says that W. A. Blount kept the bill of exceptions about two weeks, and returned the same, with his objections thereto, which objection is marked "Exhibit A" in his affidavit.

Affiant further says that he made his replication to the objections and forwarded the same to the Hon. Charles Swayne, judge, at Guyencourt, Del.

Affiant further says that on or about the 16th day of June, 1902, a hearing was had on said bill before the Hon. Charles Swayne, judge, at Pensacola.

Affiant further says that the documents which were objected to, not being in the bill of exceptions at that time, is shown by the said Exhibit A attached to the affidavit of W. A. Blount in his motion; that none of the documents so named were filed in the court or copies thereof filed or left as of record in the case.

Affiant further says that the Hon. Charles Swayne rendered his decision, requiring affiant to include in the bill of exceptions copies of all the documents introduced in evidence by the defendants in error.

Affiant further says that he did go to Tallahassee, Fla., and obtain copies of all documents which had been introduced, though the same had not been filed, or copies thereof filed or left as of record in the case, as the purported Spanish documents offered in evidence by the defendants had been immediately removed from the court at Pensacola without copies being left or filed as of record in the court, and return to Tallahassee, Fla.

Affiant further says that at the time of the hearing aforesaid that there were still other documents offered by the defendants in error at the time of the trial of the case in the hands of W. A. Blount and William Fisher, and for that reason a copy of those documents were not included in the bill of exceptions.

Affiant further says that after obtaining copies of all documents that were offered in evidence and of which he had been able to obtain in order to make copies from that affiant prepared his bill of exceptions and presented the same to W. A. Blount, and that W. A. Blount, after keeping the same for about two weeks, returned the bill of exceptions with his objections, designated as "Exhibit B" in his affidavit.

Affiant further says that he took the objections and the bill of exceptions and carefully went over the same and corrected the same so far as right, but there were several documents referred to in these objections which affiant had not been able to get hold of, as the same was in the hands of the attorneys for the defendants in error.

Affiant further says that none of the documents named in these objections were filed in the court or copies thereof left or filed as of record in the case.

Affiant further says that after preparing his bill of exceptions he presented the same to W. A. Blount, and that after W. A. Blount had kept the bill of exceptions for about two weeks he returned the same with the objections, marked "Exhibit C" of his affidavit.

Affiant further says that affiant stated to W. A. Blount that the record in the suit of *A. V. Caro v. Samuel Jaudon and Thurston* and the deed from the Pensacola City Company to Charles Ahrons affiant has been unable to obtain copies of same, as their whereabouts were unknown to affiant, and upon the following day they were furnished to affiant by William Fisher.

Affiant further says that, after making copies of the same, he included them in the bill of exceptions, and compared the objections of W. A. Blount with the bill of exceptions, and as affiant was informed that W. A. Blount was out of the city, he, affiant, made replication to each and every objection made by W. A. Blount, and forwarded, by mailing in the post-office at Pensacola, the bill of exceptions, the brief as taken by the stenographers setting out the testimony and designating the name of each and every document that was offered, also the objections of W. A. Blount, and

a replication to each and every objection, directing the same to Hon. Charles Swayne, judge, at Guyencourt, Del., a copy of said replication being hereto attached and marked "Exhibit B."

Affiant further says that at the time of the making of the objections that there were no documents offered by the defendants in error on file or copies thereof filed or left as of record in the case. All other allegations are answered fully in the traverse of motion included herein.

E. T. DAVIS.

Sworn to and subscribed before me this 17th day of January, 1903.

C. J. LEVEY, *Notary Public*.

[Seal of notary public, State of Florida.]

EXHIBIT A.

GUYENCOURT, DEL., 8 Mo. 26th, 1902.

E. T. DAVIS, Esq., *Pensacola, Fla.*

DEAR SIR: I send you by this mail bill of exceptions in F. McGuire case signed. I was not able to verify all the replications, especially to Mr. Blount's exceptions Nos. 5, 13, 14, and 15, but I send the bill signed on account of your short time for writ of error. If I find in future that Mr. Blount is correct in any of his objections I shall so certify to the court of appeals.

Yours, very truly,

CHARLES SWAYNE.

EXHIBIT B.

In the United States circuit court for the northern district of Florida, at Pensacola.
Florida McGuire and Matilda Caro v. Wm. Fisher and W. A. Blount et al.

The plaintiffs' replication to the exceptions of defendants to the bill of exceptions:
First. To first exception will say that the word never has been inserted.

Second. To second exception will say that the record referred to has been inserted in its proper place, coming from the hands of Mr. Wm. Fisher.

Third. To third exception will say that the bill of complaint has been inserted in its proper place.

Fourth. To the fourth exception will say that the document introduced never was a deed, but was an answer made by the Pensacola City Company, in which C. C. Younge, sr., made affidavit that he was one of the directors of the Pensacola City Company and was counsel for the company in that suit, which document is in its proper place in record of bill of exceptions.

Fifth. To the fifth exception will say the document referred to is inserted in its proper place, having come from the possession of Mr. Wm. Fisher.

Sixth. To the sixth exception will say that the statement referred to has been inserted in the record in its proper place, as agreed upon by counsels.

Seventh. To the seventh exception will say that the bill and answer referred to is in their proper places and the order appointing a receiver withdrawn and placed in its proper place in the record, simply being a mistake in placing the documents as offered.

Eighth. To eighth exception will say that the date 1873 has been stricken and the date 1783 inserted, simply being a clerical error.

Ninth. To the ninth exception will say that the proceedings of the land commissioners are in the record in its proper place.

Tenth. To the tenth exception will say that the pages referred to has been withdrawn from between two parts of the proceedings by Maria Moreno to sell the property, simply being overlooked when placed in the record.

Eleventh. To the eleventh exception will say that pages 120 and 121 being withdrawn from their position, the other pages follow in order and the caption is stricken.

Twelfth. To the twelfth exception will say that the translation of pages from 115 to 125 has been inserted in the record in its proper place, having been overlooked.

Thirteenth. To the thirteenth exception will say that the pages referred to and as they appear in the record is a true and correct copy of the document offered in evidence.

Fourteenth. To the fourteenth exception will say that the plats referred to in this exception, that all of the plats offered and read to the jury is set out in the record in their proper place, and no other plats or explanations were offered, read, filed, or left of record in the case.

Fifteenth. To the fifteenth exception will say: The protocols relating to Thomas and Joseph Marshall are contained in the record in its proper place, and that the eight or ten others referred to in this exception are not named or designated, nor were they offered in evidence, or read to the jury, or filed of record, or left as of record in this case.

Sixteenth. To the sixteenth exception will say that the word "proved" appears in the brief of evidence as written by the stenographer.

Seventeenth. To the seventeenth exception will say that the words "that land" appear in the brief of evidence as written by the stenographer.

JAMES WILKINSON,
SIMEON BELDON, and
E. T. DAVIS,
Attorneys for Plaintiffs.

EXHIBIT C.

In United States circuit court, northern district of Florida, at Pensacola. Florida McGuire and Matilda Caro v. Wm. Fisher et al. Plaintiffs' replication to the defendants' exception to plaintiffs' bill of exceptions.

First. To defendants' first exception answers as follows:

The exception does not designate or name any plats made by Joseph E. Caro which are not set out in the bill of exceptions, and that no other plats made by Joseph E. Caro were offered in evidence, read to the jury, named, or designated, or filed, or copies thereof produced, offered, filed, or left of record in this case, except the plat which was shown to the witness, read to the jury, designated by date, and offered in evidence, and is fully set forth in the bill of exceptions in its proper place, and which is a plat of this particular property in controversy, and purports to have been made by Joseph E. Caro.

Second. To defendants' second exception answers as follows:

The protocol of Thomas and Joseph Marshall is set out in the bill of exceptions in its proper place and designated by name, over which there is no contention. The eight or ten protocols referred to in the exception are not named or designated, nor were they produced at the trial of the case, or offered in evidence, or read to the jury, or filed, or copies thereof produced, offered in evidence, or read to the jury, or filed or left as of record in this case.

Plaintiffs, further answering, say: That the exceptions made by the defendants, and which are only two in number, were fully presented to the court before the approval and signing and sealing of the bill of exceptions, by the court, and that the bill of exceptions, as it now stands, contains a full and complete record of the case, verified by the brief of evidence made and prepared by the stenographer, and that the exceptions by the court, and that the bill of exceptions, as it now has been fully presented to the court, and passed upon, and the bill of exceptions approved, sealed, signed, and filed, and the defendants have a complete remedy by writ of certiorari.

JAMES WILKINSON,
SIMEON BELDON,
E. T. DAVIS,
Attorneys for Plaintiffs.

EXHIBIT E.

[Copy.]

SEPTEMBER 26, 1902.

Florida McGuire v. William Fisher et al.

Mr. E. T. DAVIS, *Cty.*

DEAR SIR: Mr. F. W. Marsh, clerk, informs me that you insist upon his making up and delivering to you the transcript of the record in this case, including a bill of exceptions which does not contain the papers which the court directed you to insert

SWAYNE IMPEACHMENT PROCEEDINGS IN THE SENATE. 171

before using it. You will recollect that the bill, as it now stands, is not the bill as signed by Judge Swayne, and therefore, even though you could technically rely upon the bill of exceptions signed by him, you can not do so as it now stands. I have telegraphed the judge of your insistence, and beg to inform you that if you persist in your demands upon the clerk that I will, immediately upon the return of the judge, take proceedings to have you disbarred from practice in this court. There can be no other result of your attempt to use a paper which you know does not represent the final certificate of the judge.

Yours, very truly,

W. A. BLOUNT.

(Indorsement:) No. 1202. In United States circuit court of appeals, at New Orleans, La. Florida McGuire and Matilda Caro, plaintiffs in error v. W. A. Blount and William Fisher et al., defendants in error. Motion to dismiss bill of exceptions. Traverse of E. T. Davis. Filed January 20, 1903. Charles H. Lednum, clerk.

Florida McGuire et al. v. William A. Blount et al. No. 1202.

JANUARY 27, 1903.

On this day this cause was regularly called, and after argument by E. Howard McCaleb, esq., and E. T. Davis, esq., for plaintiffs in error, and W. A. Blount, esq., for defendants in error, was submitted to the court upon record and briefs.

Florida McGuire et al. v. William A. Blount et al. No. 1202.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the northern district of Florida, and was argued by counsel.

On consideration whereof it is now here ordered and adjudged by this court, that the judgment of the said circuit court in this cause be, and the same is hereby, affirmed.

It is further ordered and adjudged that the plaintiffs in error, Florida McGuire and Matilda Caro, and the sureties on the writ of error bond herein, George W. Pryor, sr., and Ludwig Carlson, be condemned to pay the costs of this cause in this court, for which execution may be issued out of said circuit court.

MARCH 24, 1903.

United States circuit court of appeals, fifth circuit. Florida McGuire et al., plaintiffs in error, v. William A. Blount, defendants in error. No. 1202. Error to United States circuit court, northern district of Florida.

To the honorable United States circuit court of appeals for the fifth circuit:

The petition of Widow Florida McGuire and Miss Matilda Caro, plaintiffs in error herein, respectfully shows:

That they desire a rehearing from the judgment rendered in this cause on the — day of — by this honorable court for the reasons that the court erred in refusing to sustain the various bills of exception and specifications of error as set forth in the record and plaintiffs' briefs filed herein, pages 4 to 26, inclusive, made part of this exception for further reference. That the court especially erred in confirming the ruling of the lower court admitting the documents referred to in said bills of exception in evidence over the objections of plaintiffs. That said documents were not properly authenticated by any official seal or official certificates and were suspicious in appearance. That said court did not specifically pass upon the various exceptions and bills of exception as contained in the record, and that the court erred in refusing to sustain aforesaid bills of exception set forth specifically in plaintiffs' assignment of errors, contained on pages 4 to 13 of appellants' original brief, annexed to and made a part of this petition, for a rehearing for further reference, and as if set out in extenso herein.

Wherefore petitioners pray that a rehearing be granted to them in this cause and for all general and equitable relief, and your petitioners will further pray.

E. T. DAVIS,
SIMON BELDEN,
JAMES WILKINSON,
Attorneys.

Petition for rehearing filed April 9, 1903.

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Florida McGuire et al. v. William A. Blount et al. No. 1202.

APRIL 10. 1903.

Ordered, that the petition for rehearing filed in this cause be, and it is hereby, denied.

United States circuit court of appeals, fifth circuit. November term, 1902. Florida McGuire et al., plaintiffs in error, v. William A. Blount et al., defendants in error. No. 1202. Error to the United States circuit court, northern district of Florida. Before Pardee, McCormick, and Shelby, circuit judges.

By the COURT:

On the trial of this case the trial judge directed a verdict for the defendants, and the correctness of that direction turns upon the admissibility and effect in evidence of the purported will of Gabriel Rivas, ancestor of the plaintiffs below, plaintiffs in error here, and a certain protocol and documents showing judicial proceedings before the Spanish governor of West Florida and other Spanish officials in West Florida from 1807 to 1821, all in the settlement of the estate of the said Gabriel Rivas, and showing the judicial sale of the land in controversy.

Upon consideration, and in the light of the very able arguments and briefs submitted, we are of opinion that the said will, protocol, and documents were properly admitted in evidence, and that their effect, sustained as they were by proof of corroborating facts and circumstances is to show that the plaintiffs below, plaintiffs in error here, as the heirs and descendants of Gabriel Rivas, have no right to recover the lands in controversy.

The direction to the jury to find for the defendants was correct, and the judgment of the circuit court is affirmed.

Filed March 24, 1903.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

I, Charles H. Lednum, clerk of the United States circuit court of appeals for the fifth circuit, do hereby certify that the foregoing 502 pages, numbered from A to 501, inclusive, contain a true copy of the proceedings, including opinion of the court, except that the original maps filed with the record are not copied therein, but are held in my custody, subject to the order of the court, in the case of Florida McGuire et al. v. William A. Blount et al., No. 1202, as the same remains upon the files and records of said United States circuit court of appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals at the city of New Orleans, La., this 6th day of May, A. D. 1903.

[SEAL.]

CHARLES H. LEDNUM,

Clerk of the United States Circuit Court of Appeals for the Fifth Circuit.

UNITED STATES OF AMERICA, ss:

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the fifth circuit, greeting:

[Seal of the Supreme Court of the United States.]

Being informed that there is now pending before you a suit in which Mrs. Florida McGuire, born Lavalette, widow of ——— McGuire, and Matilda Caro are plaintiffs in error, and William Fisher, Mrs. William Fisher, Thomas C. Watson, John Williams, William A. Blount, James W. Bullard, and Mrs. Young, widow and executrix or administratrix of the estate of C. C. Young, are defendants in error, which suit was removed into the said circuit court of appeals by virtue of a writ of error to the circuit court of the United States for the northern district of Florida, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said circuit court of appeals and removed into the Supreme Court of the United States, do hereby command you that you send without delay to

the said Supreme Court as aforesaid the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Hon. Melville W. Fuller, Chief Justice of the United States, the 17th day of November, in the year of our Lord 1903.

JAMES H. MCKENNEY,
Clerk of the Supreme Court of the United States.

(Indorsed:) No. 1202. File No. 19100. Supreme Court of the United States. No. 449, October term, 1903. Florida McGuire et al. v. William A. Blount et al. Writ of certiorari. United States circuit court of appeals. Filed November 27, 1903. Charles H. Lednum, clerk.

UNITED STATES OF AMERICA, *Fifth Judicial Circuit:*

In obedience to the command of the within writ, and by direction of the judges of the United States circuit court of appeals for the fifth circuit, I, Charles H. Lednum, clerk of said court, as a return to, and in compliance with, said writ, do herewith transmit to the honorable, the Supreme Court of the United States, a true, full, and perfect transcript of the record and all proceedings had in said court in the cause wherein Florida McGuire et al. were plaintiffs in error and William A. Blount et al. were defendants in error, as fully and completely as the same now remains of record in my office, except the original maps filed with the record are not copied therein, but are held in my custody, subject to the order of the court.

Given under my hand and the seal of said United States circuit court of appeals for the fifth circuit at the city of New Orleans, La., this 7th day of December, A. D. 1903.
[Seal United States circuit court of appeals, fifth circuit.]

CHARLES H. LEDNUM,
Clerk of the United States Circuit Court of Appeals for the Fifth Circuit.

(Indorsed: File 19100. Supreme Court, U. S. October term, 1904. Term 134. Florida McGuire et al., petitioners, v. Wm. A. Blount et al. Writ of certiorari and return. Filed December 10, 1903.)

SUPREME COURT OF THE UNITED STATES:

I, James H. McKenney, clerk of the Supreme Court of the United States, do hereby certify that the foregoing printed pages, numbered from 1 to 490, inclusive, contain a true copy of the transcript of record in the case of Florida McGuire and Matilda Caro, petitioners, v. William A. Blount et al., No. 134, October term, 1904, as the same remains upon the files of said Supreme Court.

In testimony whereof I hereunto subscribe my name and affix the seal of said Supreme Court, at the city of Washington, this 14th day of February, A. D. 1905.
[Seal of the Supreme Court of the United States.]

JAMES H. MCKENNEY,
Clerk of the Supreme Court of the United States.

ELZA T. DAVIS recalled.

By Mr. Manager OLMSTED:

Q. Mr. Davis, you were sworn yesterday?—A. Yes, sir.

Q. You are a practicing lawyer at Pensacola?—A. I am.

Q. Do you practice in Judge Swayne's court?—A. Yes, sir.

Q. State, if you know, or state if you have seen Judge Swayne in Florida at any time when his court was not in session.—A. I do not remember that I have.

Q. Will you state, so far as you can from your own knowledge, what inconvenience, if any, has resulted to suitors or counsel from his absence from his district?—A. Well, I can speak from personal experience that in the case of Florida McGuire and Matilda Caro v. W. A. Blount et al., I had a great deal of inconvenience in that case, as well as a great deal of expense was incurred which if Judge Swayne had been within the district would not have been incurred.

Q. Will you state how that came about?—A. Immediately after the trial of the case the records or documents which were offered in evidence were removed from the court. Some of those documents were in the possession of the defendants in the case, others were returned to Tallahassee. They purported to be—

Mr. Manager OLMSTED. Will you speak a little louder, Mr. Davis?

The WITNESS. Yes, sir. Other documents purporting to be Spanish documents were returned to Tallahassee. Immediately after the court adjourned Judge Swayne left for Guyencourt, Del., or left Pensacola. An order was granted by Judge Swayne allowing sixty days in which to file or present the bill of exceptions. When I went to make up the bill of exceptions the only document which I found in the court was the certified copy of the original grant which had been introduced by the plaintiffs. I prepared a copy of it, and with my bill of exceptions tendered it to Mr. Blount, who was counsel for the defendants in the case, and who was also one of the defendants. He objected to that and furnished me with certain documents which he had introduced himself, pertaining to the property, or that part of the property which he claimed, and Mr. Fisher also furnished me with some. He was a defendant in the case. I prepared copies of those documents and copied them into the bill of exceptions, presented it to Mr. Blount, and he objected. As there were no other documents in the court or any place where I could get copies, I forwarded to Judge Swayne, at Guyencourt, Del., the bill of exceptions, Mr. Blount's objections, and my replication. Judge Swayne held the bill of exceptions until he returned some time in June. I do not remember the exact date.

Q. Just one moment. To what place did you forward those papers?—

A. To Guyencourt, Del.

Q. Go ahead.—A. After he came back he heard the objections of Mr. Blount to my replication, and requested me to obtain copies of the records at Tallahassee. I went to Tallahassee and I saw the great trouble and inconvenience as well as expense that would be incurred, and I wrote Judge Swayne a letter and directed the letter to Pensacola, Fla., as I did not think that he had time to leave Pensacola before the letter would reach him. I got no reply whatever, but I did get copies of those records, and included or inserted them in the bill of exceptions. I presented the bill of exceptions to Mr. Blount. Mr. Blount made certain objections, stating that certain documents were not included. I made my replication and forwarded the bill of exceptions, with those objections and the replication, on to Judge Swayne at Guyencourt, Del. I did not hear from him for several days, and I wrote a letter to him, stating that my time was nearly out for suing out my writ of error. In a few days I received the bill of exceptions, with a letter, stating that he had signed the bill of exceptions. Soon after I received the bill of exceptions I carried them to the clerk of the court and filed them.

Some time afterwards Mr. W. A. Blount telephoned me that he objected to Judge Swayne's signing the bill of exceptions; that he had wired to him making these objections, and for me not to use the bill of exceptions until the bill of exceptions had been submitted to him and returned to Judge Swayne for approval.

Mr. McCaleb was interested with me, or he had been employed to sue out or prepare the writ of error in the case. I telephoned Mr. McCaleb immediately; and upon that I went to New Orleans. The

writ or error was prepared, and I took it before Judge Shelby at Huntsville, Ala., he being the only judge within the district. I came back and I filed the writ of error. I saw Mr. Marsh, clerk of the court, and he informed me that he had received a telegram from Judge Swayne, and that he was informed by Mr. Blount not to permit me to use that bill of exceptions until after they had been submitted to him and returned to Judge Swayne. I told Mr. Marsh that as soon as he would certify to the bill of exceptions I would take the matter up before Judge Shelby. He informed me—

Q. Who was Judge Shelby?—A. He was one of the judges of the circuit court of appeals, acting as a district judge there—sitting as district judge.

Q. Where was his home?—A. In Huntsville, Ala.

Q. You went to Huntsville to see him?—A. Yes, sir.

Q. Proceed.—A. So that the next day I went to the court-house and told Mr. Marsh that I wanted him to certify to the bill of exceptions.

Mr. THURSTON. Wait a moment.

Mr. President, we object to any statement as to conversations happening between this witness and any other persons, being mere hearsay. We have no objection whatever to the witness detailing any transactions that can be stated without stating what conversations took place with third parties.

The PRESIDING OFFICER. That is all the witness can state; he should not repeat a conversation.

Mr. Manager OLMSTED. We do not care about having conversations detailed. He is only stating the direction he gave to the clerk, however.

The WITNESS. I went to Mr. Marsh in the morning, and he said to come back that afternoon; that he would speak to Mr. Blount about the matter. That afternoon I went back to the court-house, paid him his fee, and he told me that he would not deliver the bill of exceptions to me, but would forward it to the clerk of the circuit court of appeals in New Orleans. I told Mr. Marsh that I would go to New Orleans that night, and I would expect that bill of exceptions there by the next morning. So that I went to New Orleans and the bill of exceptions came in. Mr. Blount prepared a motion to dismiss the bill of exceptions.

Q. A motion in the circuit court of appeals?—A. In the circuit court of appeals. And we made our answer; he setting out in an affidavit what had occurred, and also attaching the certificate of Judge Swayne, as well as attaching certain letters. I made my answer to the affidavit, and attached the letter which I had received from Judge Swayne from Guyencourt, Del., at the time the bill of exceptions was forwarded to him at Pensacola. After that was done and filed, Mr. Blount withdrew the bill of exceptions and the case proceeded to trial before the circuit court of appeals.

Q. He withdrew the motion?—A. Withdrew the motion.

Q. Now, will you state, Mr. Davis, what delay, what expense, and what inconvenience resulted from the absence of Judge Swayne. In the first place, what delay?—A. Well, sir, I think we were delayed at least four months. If Judge Swayne had been within the district during the sixty days which were allowed to make up the bill of exceptions, I think the whole matter could have been settled then and there during those sixty days.

Q. State whether or not that loss of four months in getting your bill of exceptions settled resulted in your losing a term in the circuit court of appeals?—A. Yes, sir; I think so.

Q. Then what would you say was the final delay in getting your case disposed of in the circuit court of appeals resulting from the absence of Judge Swayne from his district?

The WITNESS. You mean the time?

Mr. Manager OLMSTED. Yes.

A. I should say at least four or five months.

Q. How far apart are the terms of the circuit court of appeals?—A. Five months, I believe it is.

Q. Well, did you lose any time in getting into the circuit court of appeals?—A. Yes, sir. The time that we lost was, if we had been able to have filed our bill of exceptions there in the circuit court of appeals, it could have come up at the following term or been heard during that term—

Q. When was that?—A. Otherwise it passed over the entire term and was filed at the next term of court—the October term.

Q. What additional time did the absence of Judge Swayne from his district impose upon you as counsel? What additional time were you required to expend upon the case in getting your bill of exceptions settled?—A. Well, my absence at Tallahassee in getting copies of the records there, and also it necessitated my making one trip to New Orleans in reference to this motion to dismiss.

Q. And to Huntsville?—A. And to Huntsville.

Q. Well, would those trips have been unnecessary had the judge been at home to adjust this bill of exceptions?—A. Yes, sir.

Q. Now, how many days of this time were involved in those things?—A. I was at Tallahassee more than two weeks.

Q. How long upon the trip to Huntsville and New Orleans?—A. At Huntsville—I was there from the time I left Pensacola until I returned, about four days—between three and four days.

Q. How long on the trip to New Orleans?—A. I was there three days.

Q. That would be twenty-one days of your time?—A. Yes, sir.

Q. I do not want to inquire into any delicate professional matters between you and your client, but I assume that your bill for professional services was not reduced on account of that extra time?—A. No, sir.

Q. Will you state what additional expense you or your client incurred in the matter outside of your professional services?—A. The expense to Huntsville, I think, was between \$35 and \$37—the total expense; the expense to Tallahassee was the railroad fare, which was seventeen dollars and something, I believe, and my board there at \$2 a day. Besides, I employed a clerk to assist me in taking tracings of the Spanish documents, for which I paid \$35.

Q. Then your trip to New Orleans?—A. Yes, sir.

Q. You were speaking of the trip to Tallahassee?—A. Yes, sir.

Q. Now, how much expense was involved in the New Orleans trip?—

A. My expense to New Orleans was about \$22.

Q. Now, what additional expense, if any, was involved in the matter of printing in the circuit court of the United States by reason of this motion to strike off the bill of exceptions?—A. I think that was \$64, including the brief.

Q. Then these items which you have mentioned—these items of expense in addition to your increased charge for professional services you say—do you, or do you not, say resulted from the absence of Judge Swayne from his district?—A. Yes, sir.

Q. When was Judge Swayne last in Pensacola?

The WITNESS. Do you mean this year?

Q. Any time.—A. I think it has been eight or ten months.

Mr. Manager OLMSTED. That is all.

Mr. McCUMBER. Mr. President, I want to direct the attention of the Presiding Officer to a matter in the way of an inquiry for information. I understand that the pleadings of this case do make an issuable fact possibly of the question of inconvenience, but what I wish to ask the Chair is this: When the law itself provides that it shall be unlawful for a judge to reside outside of his district, with no question whatever of convenience or inconvenience, whether the time of the Senate could properly be taken up upon an issue which, to my mind, is in no wise involved in the case. I call the Chair's attention to the law, which is very specific.

Every judge shall reside in the district for which he is appointed, and for offending against this provision shall be deemed guilty of a high misdemeanor.

If the question, it seems to me, Mr. President, of convenience or inconvenience is a question at all, it is precluded by the statute itself, which presumes that it will be convenient, or more convenient, if the judge resides there, or less convenient if he does not.

I do not know how many witnesses the managers on the part of the House may have on this subject, but it seems to me that the Chair, sitting as a judge, would necessarily have to rule that all this matter was wholly immaterial. The simple question is, Was he or was he not a resident? And I submit to the Chair whether it should be gone into, and, if so, the limit that should be allowed, taking the position myself that under the statute it can not be an issuable fact.

I may say to the Chair that we might take up a week on this subject, and then every Senator and attorney might concur in the opinion that the question of convenience or inconvenience would not affect it in the least.

Mr. Manager PERKINS. Mr. President, if I may make a suggestion to the Presiding Officer in reference to the suggestion made by the Senator from North Dakota, I will say that the suggestion just made entirely corresponds with what I suggested yesterday, when I asked a somewhat similar question of one of the witnesses. It is the view of the managers, as it is of the Senator, that this evidence is immaterial. The statute says, as the Senator has properly stated, that if the judge does not reside within his district it shall be a high misdemeanor, and whether convenience or inconvenience resulted is, in our judgment, wholly immaterial.

However, in the answer of the respondent it is alleged that in his belief his absence from his district caused no inconvenience to suitors. To meet that, not knowing what the views of the Senate might be; not knowing but that some one might say, "Ah, well, this judge was absent, but it did no harm, and there was no inconvenience and no suitors suffered," we thought it might be well to offer some evidence on this subject.

But we are entirely content to take the ruling of the Chair that the evidence is immaterial and to offer no more of it, although we have other witnesses whom we could call. As the Senator has suggested, this is a branch on which indefinite evidence might be given if we saw fit to subpoena a sufficient number of lawyers.

Mr. THURSTON. Mr. President, counsel for the respondent fully agree with the position stated by the Senator from North Dakota [Mr. McCumber] and also the position as acquiesced in by the managers. We do not believe this testimony is material or relevant. We did, however, in framing our answer have in mind the fact that before the committee of the House great stress had apparently been laid in the examination of witnesses upon testimony which they claimed tended to show that Judge Swayne's temporary absences from Florida had caused inconvenience to suitors and attorneys. Therefore we thought we were compelled to meet what had appeared in a previous investigation to be, in the theory of the managers, material. We do not believe it is.

We believe that the question of fact before the court is this, and only this: Did Judge Swayne have a residence in the district for which he was appointed? And that question of fact is in nowise changed or modified by reason of any further situation which may involve the convenience or the inconvenience of suitors or of attorneys.

We did not object to the introduction of this testimony because we did not conceive at first that the honorable managers would present, and are astonished now to learn that they have presented, to the Senate a line of testimony which they did not in the first instance conceive to be material to the issue. We now heartily acquiesce in their admission, and agree with them that this testimony is irrelevant and immaterial, and we move to strike it out.

Mr. Manager PALMER. Oh, no.

Mr. NELSON. Mr. President, this testimony is not irrelevant or immaterial upon the issue of residence. It has a bearing upon the question whether Judge Swayne resided in his judicial district or in the State of Delaware or elsewhere, and to that extent it ought to remain in the record and ought not to be stricken out.

Mr. Manager OLMSTED. And Mr. President, I think, if I may be permitted an additional suggestion, it is directly in response to the averment of the honorable counsel for the respondent, who are now taking a position which they did not assume in their answer.

The PRESIDING OFFICER. Unless some Senator desires to have the matter submitted to the Senate, the Presiding Officer thinks that this testimony has some bearing upon the question of residence; that so far as the question of inconvenience is concerned, that it is not material to the issue.

Mr. Manager OLMSTED (to counsel for respondent). Do you wish to cross-examine the witness, gentlemen?

Mr. HIGGINS. Mr. President, I desire to say that under the ruling just made by the Chair I assume it would not be in order for me to direct any questions to this witness affecting the subject of inconvenience, but I trust no member of the court will permit the cause of the respondent to be prejudiced in his mind because of the testimony of the witness in that regard, when I have not had the opportunity of eliciting the facts which I expected to adduce upon cross-examination.

Q. (By Mr. HIGGINS.) What year was this, Mr. Davis?—A. 1902.

Q. When did you try your case?—A. In March.

Q. It arose out of certain documents—A. Yes, sir.

Q. That you did not put in the bill of exceptions?—A. Yes, sir.

Q. It got into a tangle?—A. Yes, sir. You mean the trial of the case?

Mr. HIGGINS. No; I mean the bill of exceptions.

A. Yes, sir; that is correct.

Q. And you had to go to Tallahassee to find the papers?—A. Yes, sir.

Q. They were Spanish papers there?—A. They purported to be.

Q. You say this was in 1902?—A. Yes, sir.

Mr. HIGGINS. That is all.

Mr. SPOONER. I wish to submit a question.

The PRESIDING OFFICER. The Senator from Wisconsin propounds a question which will be read by the Secretary.

The Secretary read as follows:

Q. Was your visit to and sojourn at Tallahassee to secure copies of documents to be incorporated in the bill of exceptions attributable to the absence of Judge Swayne from the district? If so, why?

A. Because the documents were introduced in the court. Under the rules of practice, where the original documents are offered, it devolves upon the party offering the document to file certified copies. In this case, as the documents were brought from Tallahassee by an order or direction of this court, they could have been permitted to remain there in order to obtain copies from them.

Reexamined by Mr. HIGGINS:

Q. I will ask if you could not have obtained that order from the judge at the time of the trial?—A. Yes, sir.

Q. Did you make application for such an order?—A. I did not, from the fact that I had no reason to believe the documents would ever be returned without certified copies being left, or our having the right to use the original document for the purpose of getting copies made.

Q. Did you not know those were the original Spanish documents that are properly kept in care at Tallahassee in the record office there?—A. Yes, sir.

Q. And that they could not remain in this court unless they were impounded by the court?—A. Yes, sir.

Q. Was there any rule by which you could get copies unless they were made at your own expense or on your own motion?—A. If they were permitted to remain in the court or by an order of the court, I could have gotten them.

Q. Then would they have to go back to Tallahassee unless you got such an order from the court?—A. Yes, sir.

Q. And you did not ask for it?—A. No, sir.

The PRESIDING OFFICER. The Presiding Officer does not think that the evidence in relation to the inconvenience of this witness by reason of the absence of Judge Swayne from Florida or Pensacola is material or even admissible, but that so much of his testimony as proves the fact that the judge was absent from Florida at Guyencourt, Del., at certain times is admissible for what it is worth.

Mr. HIGGINS. We have no other questions.

Mr. Manager OLMSTED. That is all.

Mr. President, in obedience to the rule of the court, we refrain from calling other witnesses upon the question of inconvenience.

Mr. Manager CLAYTON. Call Mr. Dearborn.

EUGENE C. DEARBORN WAS SWORN.

Mr. Manager CLAYTON. Mr. President, I have talked with this witness, and I learn that he is suffering from some temporary throat affection, and I am quite sure he will be unable to make himself heard in the Senate Chamber. I therefore ask that one of the clerks repeat the witness's answers to my questions.

The PRESIDING OFFICER. If there be no objection, that course will be pursued.

The answers of the witness were all repeated to the Senate by the chief clerk.

By Mr. Manager CLAYTON:

Q. Where is your residence?—A. Miami, Fla.

Q. How long have you resided there?—A. About eight years.

Q. Where did you reside before you moved to Miami?—A. Jacksonville, Fla.

Q. What is your occupation now?—A. Clerk of the circuit court of Dade County.

Q. What was your occupation when you resided at Jacksonville, Fla.?—A. Conductor on the Jacksonville, Tampa and Key West Railroad.

Q. Did you ever, in obedience to the instruction of the receiver or his subordinate officers, they being your superiors, accompany the private car of that railroad company on a trip to Guyencourt, Del.?—A. I did.

Q. When was that?—A. We left Jacksonville on October 30, 1893.

Q. Pursuant to whose instructions?—A. Mr. Spencer, who was train master of the road under Mr. Durkee.

Q. Who is Mr. Durkee?—A. He was the receiver of the road.

Q. What road?—A. The Jacksonville, Tampa and Key West Railroad.

Q. And when was it you took this trip to Guyencourt, Del., in obedience to such instructions?—A. We left Jacksonville October 30, 1893, and arrived in Guyencourt on November 1, 1893.

Q. For what purpose did you take the car to Guyencourt, Del.?—

A. My instructions were to go there and get Judge Swayne and family and bring them back to St. Augustine.

Q. What kind of a car was it that you took to Guyencourt, Del.?—

A. It was a private car of the Jacksonville, Tampa and Key West Railroad, No. 30

Q. In whose possession and control was the car?—A. It was in the possession of the Jacksonville, Tampa and Key West Railroad, under Mr. Durkee, who was receiver at that time.

Q. Who provisioned the car for the trip to Guyencourt, Del., and return?—A. I suppose it was provisioned by the company.

Mr. THURSTON. We object to the supposition of the witness.

Mr. Manager CLAYTON. I did not call for his supposition. I now admonish the witness not to give me suppositions.

Mr. THURSTON. If the witness does not know of his own knowledge, it is a fact that can be proved by some one who does, and we think he

ought not to state any understanding he may have had or what he was told by anyone else.

Mr. Manager CLAYTON (to the witness). You will not state your supposition.

The PRESIDING OFFICER. The Presiding Officer thinks the portion of the answer which the Clerk has not repeated was all right.

Mr. Manager CLAYTON. Then I will ask him the question again. [To the witness.] At whose instance was the car provisioned for the trip to and from Guyencourt, Del.?

A. The car was provisioned when I took it; when I started.

Q. Do you know who provisioned it?—A. I do not know.

Q. Do you know by whose direction it was provisioned?—A. No, sir.

Q. Did Judge Swayne provision it?—A. No, sir.

Q. Was Judge Swayne in Jacksonville at the time the car started on that trip?—A. No, sir.

Q. Was there any rule or custom of the receiver or the railroad in regard to the provisioning of this car of the receiver?—A. I do not understand the question.

Q. Was this car generally kept provisioned?—A. Yes, sir.

Q. At whose expense was it so kept provisioned?—A. The railroad's.

Q. You mean the railroad in the hands of Major Durkee as receiver—the Jacksonville, Tampa and Key West Railroad?—A. Yes, sir.

Q. Who was operating that railroad and this car at that time?—

A. Major Durkee was the receiver.

Q. And was he the gentleman who was so operating this railroad and that car at that time?—A. Yes, sir.

Q. Do you know by what court he was appointed such receiver?—

A. By the United States court.

Q. Do you know by what judge or judges?—A. I do not.

Q. Did you ever hear from Judge Swayne while you were on the Guyencourt, Del., trip, of a trip that he had taken in the same car to the Pacific coast?—A. I heard him mention his trip to the Pacific coast, but I do not know whether he went in that car or in a F. C. and P. car.

Q. What did he say about his trip to the Pacific coast?—A. He only said he had a pleasant trip, and was talking of the country.

Q. Do you know how long his Pacific-coast trip was anterior to the Guyencourt, Del., trip?—A. I do not.

Q. What lines of railroad did you take with this private car in going from Jacksonville, Fla., to Guyencourt, Del.?—A. We took the Plant system, or the S., F. and W., to Charleston. From Charleston to Richmond the Atlantic Coast Line, the R., F. and P., and the Washington Southern, I think it is, from Richmond to Washington.

Q. That is the Richmond, Fredericksburg and Potomac Railroad?—A. Yes, sir. From Washington we took the Pennsylvania to Guyencourt.

Y. Who furnished you transportation over these various lines for this car and for the passengers?—A. Mr. Spencer gave me the passes for the car and party.

Q. Please state again who Mr. Spencer was—what official position held with the Jacksonville, Tampa, and Key West Railroad?—A. He was train master.

Q. In whose name were those passes for the passengers that you proposed to bring, and did afterwards bring, on the car to Florida?—

A. I am not certain whether the passes were in Major Durkee's name or just in the name of the J. T. and K. W. car No. 30 and party.

Q. You went with this car and these passes, or this transportation, to Guyencourt, Del.?—A. I did.

Q. What day was it that you started to Guyencourt, Del.?—A. I do not know what day of the week it was; it was October 30.

Q. When did you arrive at Guyencourt, Del.?—A. On the morning of November 1, about 8 o'clock.

Q. Whom did you take aboard the car at Guyencourt, Del.?—A. Judge Swayne, Mrs. Swayne, I think his mother, who only went as far as Wilmington, I think, and a colored servant.

Q. While en route did you pick up anybody else on your trip to Florida?—A. Mr. and Mrs. Shoemaker got on at Washington.

Q. Who were Mr. and Mrs. Shoemaker, and at whose instance did they come aboard and travel upon the car?—A. That would be a supposition, and I hardly know how to answer.

Q. Did you invite them and offer them the privilege of traveling on the car?—A. I did not.

Q. Who did?—A. I do not know.

Q. Were they friends or relatives of Judge Swayne?—A. Mrs. Shoemaker, I think, is a niece of Judge Swayne.

Q. Now, then, taking Judge Swayne and his immediate family—you left his mother at Wilmington, I understood you to say?—A. I think so.

Q. Then you brought the rest of his immediate family on to Washington, and here Mr. and Mrs. Shoemaker came aboard the car. To what place did you take the party?—A. To St. Augustine, Fla.

Q. Then what became of you and the car?—A. I went back with the car to Jacksonville the following morning.

Q. Jacksonville was the place of headquarters for that car?—A. Yes, sir.

Q. And you left Judge Swayne and his family at St. Augustine?—A. Yes, sir.

Q. When you started on the trip to Guyencourt, Del., you have said that the car was provisioned?—A. Yes, sir.

Q. Was any money furnished you to buy green groceries or perishable groceries while the car was en route?—A. Yes, sir.

Q. Who furnished you that money?—A. Mr. Spencer gave it to me.

Q. How much was it?—A. I think it was \$29.

Q. The Mr. Spencer you now refer to is the same Mr. Spencer whom you described a little while ago?—A. He is.

Q. Have you a memorandum book to refresh your memory as to the amount of money furnished you for that purpose?—A. Yes, sir.

Q. And you have consulted it?—A. Yes, sir.

Q. How much of the \$29 did you spend for the purpose for which it was intrusted to you?—A. I do not remember. I returned some of it, with an itemized account of what I had spent.

Q. Can you approximate the amount which you did not so expend, but returned?—A. I can not.

Q. Who else went on that car with you and helped to compose this crew?—A. No one but the porter.

Q. Who paid you your wages, compensation, or salary for making that trip to Guyencourt, Del.?—A. The Jacksonville, Tampa and Key West Railroad.

Q. Who paid the wages or hire or compensation of the porter and cook on that car?—A. The J. T. and K. W. Railroad.

Q. What were your wages per month?—A. Ninety dollars.

Q. What were the wages of the cook and porter per month?—A. I do not know.

Q. Did Judge Swayne pay for any part of the provisions or service of that car?—A. No, sir; not that I know of.

Q. I believe you said that you left Jacksonville on October the 30th and reached Guyencourt November the 1st and left there on November the 2d. Am I correct in that?—A. Yes, sir.

Q. And when did you get to St. Augustine?—A. On November the 4th, about 5 or 6 o'clock in the evening.

Mr. Manager CLAYTON. The respondent's counsel can examine the witness.

Cross-examined by Mr. THURSTON:

Q. You were a regular conductor on the railroad you have spoken of?—A. Yes, sir.

Q. Employed by the month?—A. Yes, sir.

Q. Your wages went along by the month, no matter what you did?—A. As long as I worked; yes.

Q. But it did not depend upon the number of days that you ran trains?—A. Not altogether.

Q. Where did you start from with that car?—A. Jacksonville.

Q. Who started with you?—A. Mr. Coffin, the general superintendent, went as far as Washington.

Q. Then your general superintendent took that car out of Jacksonville and came to Washington with it?—A. No, sir; he came in the car. I had charge of the transportation.

Q. What was that transportation—passes?—A. Passes; yes, sir.

Q. Exchange trip passes from the different connecting lines?—A. Yes, sir.

Q. What you call "free" passes?—A. I suppose they are free passes.

Q. You have had a good deal of experience as a conductor. Do you not know that it is a custom of the different railroad companies to give free transportation to the private cars of other lines and those who occupy them?—A. Yes, sir.

Q. This transportation was not made out in the name of Judge Swayne, was it?—A. No, sir.

Q. But either to an officer of your road or to the car and party?—A. Yes, sir.

Q. You left Guyencourt on November 2?—A. Yes, sir.

Q. At what hour?—A. About 6 o'clock, I think.

Q. Did you have any meals served on that car that night?—A. I am not certain; I think we had supper.

Q. How many meals were served on that car to Judge Swayne and his party?—A. As near as I can recollect, we had five or six meals. I can not recollect exactly now.

Q. When did you get to Washington on your return trip?—A. I think it was about 10 o'clock that night.

Q. Did the party remain on the car that night, or did they—

The PRESIDING OFFICER. Perhaps the witness did not understand the counsel. You said on the return trip.

MR. THURSTON. Yes; he understands it. (To the witness.) Did the party remain on the car that night?—A. Yes, sir.

Q. When did you leave Washington for the South?—A. I think it was about 4 or half past in the morning.

Q. Did you run all that day?—A. Yes; we went right through then.

Q. What point had you reached when night came on?—A. I do not remember now.

Q. Did it take you all of those two days to run from Washington to St. Augustine?—A. We left Washington in the morning of the 3d and reached Jacksonville about 2 o'clock the next afternoon, and laid there for an hour or two and then went on to St. Augustine.

Q. How many were in the party of Judge Swayne altogether—the number?—A. From Washington or Guyencourt?

Q. Well, from Washington?—A. Mr. and Mrs. Swayne, Mr. and Mrs. Shoemaker, and the colored servant.

Q. That is five; and those five people actually ate up, out of the supplies of that railroad company, four or five meals on that trip, did they?—A. As near as I can recollect.

Q. And you do not think they paid for them?—A. No, sir.

Reexamined by Mr. Manager CLAYTON:

Q. Were you a regular conductor on the Jacksonville, Tampa and Key West Railroad at the time this trip was made to Guyencourt, Del.?—A. Yes, sir.

Q. Were you or not taken off of your regular run as passenger conductor and instructed and required to make this special trip on this private car to Guyencourt and back?—A. Yes, sir.

Q. How long did your car remain at Guyencourt, Del., waiting for Judge Swayne?—A. We got there on the morning of the 1st and left there on the evening of the 2d.

Q. You reached Washington at what time?—A. About 10 o'clock that evening.

Q. At what time did you reach St. Augustine?—A. On the evening of the 4th.

Q. Did you go up to Judge Swayne's house while you were at Guyencourt, Del.?—A. Yes, sir.

Q. What kind of a place was it?—A. It was a small house, apparently.

Q. His residence, was it?—A. Yes, sir.

MR. Manager CLAYTON. The witness may be excused.

MR. THURSTON. That is all.

MR. Manager PALMER (to Mr. Thurston). Will you need him any more?

MR. THURSTON. No.

MR. Manager PALMER. He is sick and wants to go home.

MR. Manager CLAYTON. The Sergeant-at-Arms may discharge him altogether. I will call Major Durkee.

JOSEPH H. DURKEE, sworn and examined.

THE PRESIDING OFFICER. The witness asks that he may be allowed to be seated. He may sit if there is no objection. The witness will please raise his voice and answer all questions so as to be heard all over the Chamber.

By Mr. Manager CLAYTON:

Q. Where is your place of residence?—A. Jacksonville, Fla.

Q. How long have you resided there?—A. Thirty-nine years.

Q. What is your business or occupation?—A. I do not know that I have any.

Q. What was it in 1893?—A. I was receiver of the Jacksonville, Tampa and Key West Railroad.

Q. Who appointed you receiver of the Jacksonville, Tampa and Key West Railroad?—A. The order of my appointment was signed by Don A. Pardee, circuit judge of the fifth circuit, and Charles Swayne, district judge of the northern district of Florida.

Q. When was that appointment made?—A. If my recollection serves me, early in April, 1893.

Q. By your permission or consent or direction was a private car known as private car No. 30 devoted to the making of a trip from Jacksonville, Fla., to Guyencourt, Del., and back to St. Augustine, Fla.?—A. What is the first part of your question?

Q. By your permission or your instruction or your consent was a private car known as car No. 30, belonging to the Jacksonville, Tampa and Key West Railroad, devoted to or used in making a trip from Jacksonville, Fla., to Guyencourt, in the State of Delaware, and back to St. Augustine, Fla.?—A. To the best of my recollection, it was.

Q. Who paid the expenses of that car for that trip?—A. I do not know. I presume they were charged to the corporate property.

Q. Did you pay those expenses out of your own private or personal funds?—A. No, sir.

Q. Do you know of anybody else who paid the expenses of that trip out of their private or personal funds?—A. I do not.

Q. Then I ask you again the direct question: Were not the expenses for that trip of that car, including the hire of the porter and the hire of the conductor, borne by the railroad then in your hands as receiver?—A. I presume it was. The fact that this car was used had escaped my memory until I looked over some of the testimony taken in this cause. I did not remember of its being used.

Q. Can you imagine—I put it that strong—anyone who paid the expenses of that car except that railroad in your hands?—A. I have no doubt it was paid by the railroad—by the receivers. I do not know.

Mr. Manager CLAYTON (to counsel for the respondent). You may examine him.

Cross-examined by Mr. THURSTON:

Q. Major, were you appointed as receiver for that railroad by the circuit court sitting in the northern district of Florida by the circuit judge, Pardee, and by the district judge, Swayne?—A. Yes, sir.

Q. You entered upon the possession of the railroad properties and commenced to manage them?—A. Yes, sir.

Q. When you did so, did you find among the properties of that railroad a private car?—A. Yes, sir.

Q. Was that car designed, or had it been used, or is it the custom to use such cars as a part of the general passenger equipment of that road?—A. That car was for the use of the person, whoever it might be, in charge of the property of the company.

Q. Not a car kept for hire?—A. No, sir.

Q. And not a car used in conveying passengers for hire from one point to another?—A. No, sir.

Q. It was the officers' car of the road?—A. Yes, sir.

Q. On that car you had employed, did you not, a porter who also acted as cook when the car was en route?—A. Yes, sir.

Q. Was he employed by the year or the month?—A. By the month.

Q. His compensation, then, was paid him just the same, whether the car was on the road or at home?—A. Yes, sir.

Q. Now, when that car was started out on a trip it was stocked, I suppose, to some extent with provisions?—A. Undoubtedly.

Q. You have no personal recollection in this case?—A. Certainly not.

Q. And you can not state. But you presume it was?—A. I do, sir.

Q. Do you remember that any officer of your road started out with that car and went as far as Washington?—A. I think the superintendent. I think I was asking him about it two or three days ago. I think he came to some rate making or something or other in Washington in that car at that time.

Q. Then he occupied the car in a matter of his transportation to his official duties as far as Washington?—A. That had escaped my memory until it was called to my attention.

Q. What was his name?—A. William B. Coffin.

Q. The car was sent out on what kind of transportation?—A. I presume it was on transportation obtained by me over connecting roads for the passenger cars.

Q. Is it the custom, or is it not, or was it at that time and has generally prevailed since, for different railroads of the country and in that section of the country, upon application to furnish passes, free passes, for official cars and their occupants of one road over the road of another?—A. It was quite the custom, especially in roads in the South, West, and Northwest, to grant the courtesies of the passage of a private car to the officers of roads or to those occupying the car.

Q. Was any charge ever made by any connecting line for this transportation of the car occupied by Judge Swayne's party?—A. No, sir.

Q. Did the transportation of your car over the lines of other railroads depend upon or have any relation to the amount of exchange courtesies tendered by your road to the cars of other companies?—A. No, sir.

Mr. THURSTON. That is all, Major.

Reexamined by Mr. Manager CLAYTON:

Q. Major, when that porter upon this car was not on the car and the car not in running service, what was his business or employment?—

A. He was about headquarters offices.

Q. Doing other work?—A. Whatever he was told to do.

Q. Then if he had not gone on this Guyencourt, Del., trip he would have been about the headquarters of the office, engaged in other business?—A. Unquestionably.

Q. What about the conductor upon this car when that car was not in operation? What was his business?—A. He was a passenger conductor.

Q. Engaged in running another train?—A. Yes, sir.

Q. And in the service of the company otherwise?—A. Yes, sir.

Mr. CLAYTON. The witness may go.

Mr. THURSTON. Major, just one or two additional questions.

The PRESIDING OFFICER. The Presiding Officer will inquire now whether either side desire that this witness shall remain after his examination is concluded?

Mr. Manager PALMER. No, sir; we do not desire it.

Mr. HIGGINS. We may want him.

Mr. THURSTON. We may desire him on the question of the California trip, which the managers have not gone into.

Reexamined by Mr. THURSTON:

Q. Major, your porter on the car being paid by monthly account, when he was absent on a trip was any other man employed to do any of the duties around headquarters that he would have been doing if he had remained there?—A. No, sir.

Q. So that his absence on a trip resulted in no additional expense to your railroad?—A. No, sir.

Q. Was the conductor also paid in the same way?—A. Yes, sir.

Q. Now, Major, did or could that portion of the salaries of these two men covering the period on which they took that trip appear as such in any account that you rendered to the court as receiver?—A. No, sir; they were paid on regular pay rolls.

Q. And could this small amount of provisions, stock, in the car, on a little trip like that, appear separately, or did it appear separately and independently on any account you have rendered as receiver?—A. It is very difficult to say. These matters occurred nearly twelve years ago. Every official document connected with that receivership in my possession was burned in the fire of May, 1901. The only records existing are the reports on file in court and my vouchers on file. In all matters of that kind the expense was charged just what it was and the voucher made for it. I do not know whether in this individual instance it was charged. If the car was used for any other purpose that month, the other charges would go into the same bill. I am unable to say anything about the matter.

Q. That is, in all probability there would be, from month to month, if the car was used at all on one or more trips, a monthly charge for the stocking of the car?—A. Certainly.

Q. Were any exceptions ever taken to any of the accounts you rendered while in possession of that railroad as receiver by any of the stockholders or creditors of the company?—A. No, sir.

Mr. THURSTON. That is all.

Mr. Manager CLAYTON. The witness may be excused.

The PRESIDING OFFICER. The next witness.

Mr. Manager CLAYTON. Mr. President, that is all the witnesses I desire to examine at this time on this particular line of the inquiry.

Mr. Manager PALMER. Mr. President, I wish to make an offer in support of the same article.

The managers offer to prove that the respondent on the 28th day of November, 1904, at the city of Washington, D. C., voluntarily appeared before a subcommittee of the House Judiciary Committee, not having been summoned as a witness or otherwise, and voluntarily made the following statement—

Mr. THURSTON. Mr. President—

Mr. Manager PALMER. I do not care to have the statement read unless counsel for the respondent object.

Mr. THURSTON. We object to reading the statement. I suppose the offer is to prove—

Mr. Manager PALMER. I will hand it to the court and let the court pass upon it after we discuss it. I think the court have a right to hear the statement.

Mr. BAILEY. Mr. President, while the Presiding Officer passes on such questions in the first instance, Senators must pass upon it finally, and they know what is offered before they can vote intelligently upon the question. It is unprecedented to say that the court shall not be permitted to hear what is offered before passing upon the admissibility of it.

Mr. THURSTON. Mr. President, standing here as objecting to this offer, I repeat what I said a few days since about this attempt to present to this court the statements made by Judge Swayne while he was a witness before a committee of the House of Representatives. The offer to prove what he said before that committee is all that, under any rule of practice that has ever prevailed in any court, can be made. It has never been held that in offering to prove what a witness had said somewhere else a statement could be made in the offer of what he had said somewhere else, because that would, by indirection and by pettifogging, Mr. President, present to the court, the judge, or the jury the statement of what the evidence would show when it was really admitted, if at all, and evidently in the expectation—

Mr. PETTUS. Mr. President, I object to the word "pettifogging" being used in this court.

The PRESIDING OFFICER. The Presiding Officer thinks that the word ought not to have been used.

Mr. THURSTON. I apologize for the use of that word. I was not using it with reference to this offer. I was saying that it was a common custom in some courts to attempt to show by a statement of this kind what a witness had said somewhere else, when the attorney making the offer knew and understood perfectly well that the statement itself would not be proper evidence to be introduced in the case, and that an offer of this kind was and is an attempt to present to a court evidence known to be improper, prohibited by the statutes of the United States, and its reading to the court in an offer must necessarily be, and can only be, an attempt by indirection to place in the record and before the judges testimony that they know is not legal testimony and ought not to be considered.

Now, Mr. President, the statute in this respect is very plain.

Mr. Manager PALMER. Please read it.

Mr. THURSTON. I will read it. You will find it in the rules of the Senate. Section 859 of the Revised Statutes reads:

No testimony given by a witness before either House, or before any committee of either House of Congress, shall be used as evidence in any criminal proceeding against him in any court, except in a prosecution for perjury committed in giving such testimony.

Now, Mr. President, I do not wish to reflect—and if I have made any reflections upon these honorable managers I withdraw them—I do not wish to reflect upon them in this case, but I do say that in other cases and in other courts where offers of this kind have been made they have been necessarily made with the express desire to place in the record and before the court and the jury a line of evidence that is prohibited by the law of the land from being presented. We object both to the offer to introduce the testimony and to the offer to read the pro-

posed testimony to this court. Mr. President, we also protest against this manner of presenting evidence by an offer to prove something.

The only proper way, in our judgment, if the managers wish to produce this testimony and have this court pass upon its competency, is to put a witness on the stand or to offer the record, to ask the question, or let the record be objected to, and pass upon that. I do not think it is proper for us, Mr. President—and the occasion may arise in this case where it would be most desirable for us, if it were proper—to offer to prove a certain statement of fact that we do not believe can be introduced in evidence if objected to upon the other side. But, sir, feeling our responsibility here, we will not attempt to offer before this court a statement of anything, nor will we attempt to offer in this court to prove facts setting it forth. What facts we have to prove we will prove by records, or we will prove them by questions directed to the witnesses presented in the court, and let the objections, if any there be, be taken in the regular way and upon legal lines.

Mr. BAILEY. Mr. President, before the manager begins, other members of the court may have heard exactly what was said by the honorable manager for the House, but I did not, though I infer that all of this relates to the introduction of some testimony, the admissibility of which the counsel for the respondent deny; but, for my own guidance I would like to know exactly the question before the court.

The PRESIDING OFFICER. It is in writing. The managers offer to prove that the respondent on the 28th day of November, 1904, at the city of Washington, D. C., voluntarily appeared before a subcommittee of the House Judiciary Committee, not having been summoned as a witness or otherwise, and voluntarily made the following statement. Then the statement is recited.

Mr. BAILEY. Now, Mr. President, I would like to inquire if there is any controversy as to whether or not this appearance was voluntary?

Mr. THURSTON. Mr. President, we will very frankly state there is no controversy on that subject. Judge Swayne did appear; he was examined and cross-examined, and, speaking a little outside of the record, I know that these questions the managers propose to ask him relate mostly, if not wholly, to his answers made on his cross-examination. But, Mr. President, the law of Congress does not distinguish between a man who comes before Congress or a committee of his own volition and a man who is haled there by process. The prohibition of the statute is as broad as human language can make it. It was designed for a wise and beneficent purpose, and no thought, in our judgment, ought to be had here by the managers in this case against our objection of attempting to override that statute of the Congress of the United States.

Mr. HOPKINS. Mr. President, I ask that the statute that is referred to by the learned counsel may be read.

The PRESIDING OFFICER. The manager is about to reply, and undoubtedly he will read the statute.

Mr. Manager PALMER. This is the statute, Mr. President, on which the objection is based:

SEC. 859. No testimony given by a witness before either House, or before any committee of either House of Congress, shall be used as evidence in any criminal proceeding against him in any court, except in a prosecution for perjury committed in giving such testimony. But an official paper or record produced by him is not within the said privilege.

The offer is to prove that Judge Swayne voluntarily appeared before a subcommittee of the House Judiciary Committee and made a voluntary statement in his own defense. He was not a witness; he was not summoned; and his statement was entirely voluntary.

Mr. HOPKINS. Mr. President, I should like to know if, on the occasion as to which the managers propose to use the admissions, the respondent was examined by counsel and cross-examined?

Mr. Manager PALMER. In answer to the Senator I will say this: That on this occasion he read a typewritten statement, which occupies 13 pages of the record. After his statement was read certain questions were asked him based on allegations that were made in his statement; and the questions that were asked him, that we now offer to prove, were based on suggestions made in his statement. The questions were asked by members of the committee to clear up some things that Judge Swayne had stated in his written statement. Now, we offer this testimony in entire good faith.

Mr. HIGGINS. Mr. President, I would beg to call the attention of the learned manager to the record, in which it is said, on page 578:

Charles Swayne, having been recalled, testified as follows:

The PRESIDING OFFICER. The Presiding Officer thinks that this argument ought to proceed in form—

Mr. HIGGINS. I beg to say that this was in answer to the question of the Senator from Illinois [Mr. Hopkins]. That is all.

The PRESIDING OFFICER. And it would be very much better if the manager be not interrupted by Senators, and that the manager on one side and the counsel on the other have an opportunity to present their arguments to the Senate without interruption.

Mr. Manager PALMER. I say we offered this testimony in entire good faith. We are not pettifogging; we are not endeavoring to get before the Senate testimony which is not testimony; but we offer it because we believe it is testimony, because it is competent testimony, and because it is the admission of the respondent here, a judge of a Federal court, who, in his own defense, made a voluntary statement, and he ought not to be objecting to it now here, as we believe.

Mr. MORGAN. Was that statement under oath?

Mr. Manager PALMER. No, sir; it was not under oath. To state the fact exactly as it is, Judge Swayne appeared before the committee, and this conversation occurred. On a previous occasion this testimony was given, or at least this statement was made on the last hearing that was had. On a previous hearing several months before Judge Swayne appeared and raised some question about some testimony that was given as to his residence. It was said to him by a member of the committee, "There is one man in the United States who knows all about this subject," and Judge Swayne said, "Do you mean me?" The committeeman said, "Yes; I mean you." Judge Swayne said, "Do you wish to have me sworn?" It was said to him, "That is entirely voluntarily with you; you can be sworn if you desire to be sworn." Then he held up his hand, and was sworn. That was at the hearing some months before. At the last hearing he appeared and read this typewritten statement, which, I say, occupies thirteen pages of the record, and that statement led to the inquiry made by a committeeman, which elicited the information which we now ask to give here. He was not sworn at that time. He had been sworn some months before on a different proposition at his own request or on his own volition.

Now, the reason for this statute is plain. It protects a witness who is compelled to testify to matters which might criminate him. In this case the offer is to show that Judge Swayne appeared voluntarily before the committee—and that is admitted—that he was not a witness summoned to appear, but that he appeared voluntarily, and made a statement and argument in his own defense. Something he said in that argument attracted the attention of a member of the committee who interrogated him and elicited the matter contained in the offer.

The statement is evidence here, first, because this is not a criminal proceeding against the respondent. If he has committed any crime, he can be punished for it in another proceeding. This is a proceeding in which, if Judge Swayne were convicted, he would not be punished as for a crime, but the extent of the punishment would be removal from office. It is a proceeding calculated to keep the judiciary unsullied and pure. It is the only method by which a judge who violates the tenure on which his office is held can be removed. His commission runs that he is to hold this office "during good behavior;" and the only tribunal on earth in which that question can be settled is this august tribunal.

We are here to ascertain whether Judge Swayne has behaved himself well, and whether he is fit to hold this office. This is not a criminal trial; it is not a criminal prosecution; it is not followed by a sentence of any court. All that you can do under the Constitution is to deprive him of his office. If he has committed any offense, the Constitution provides that he can be tried for that in another proceeding, and punished if he is found guilty.

The second reason why this is evidence is because he was not summoned to testify before the House committee, but appeared voluntarily to make a statement in his own defense.

Mr. THURSTON. Mr. President, just a word or two in reference to this last suggestion, which is one which I had not expected to hear—that this trial is not a criminal proceeding. What is it, Mr. President? It has been held through all the history of impeachment trials to be in accordance with trials of persons charged with crimes. The verdict to be rendered in the case is one of "Guilty" or "Not guilty"—a verdict which is only appropriate in a criminal proceeding. Punishment is not of life, or limb, or liberty, but, sir, it is a far graver one, in my judgment, than any of those would be. It is a punishment of so grave a character that it can only be inflicted, under the Constitution of the United States, on being found guilty of high crimes or misdemeanors, and yet the gentleman says, with apparent sincerity, that this is not a criminal proceeding. You are trying this man here on a charge that he is guilty of a high crime or a high misdemeanor, and yet you say it is not a criminal proceeding.

Now, Mr. President, Charles Swayne, as the record shows, appeared before the House subcommittee and was sworn as a witness, and testified there. Afterwards, at another session of the committee, he again appeared, and was again examined and cross-examined before the same tribunal on another day. Did you ever hear in any court of justice the theory, when a man had been sworn as a witness on one day, that you needed to swear him again on the next day in the same case? Why, Mr. President, if this testimony had been given in a court and Judge Swayne had been sworn on one day to testify to the truth, the whole truth, and nothing but the truth, and an adjournment

of that case had taken place for a day or a week or a year, and he had come back on the witness stand, would the honorable managers pretend to tell this court that if he had testified falsely on that second appearance he could not have been prosecuted and punished for perjury because he had not renewed the oath?

Mr. President, this is not a question of what the managers are about to prove. We are not objecting here because we fear for its effect. We are standing here, as under our oaths as his counsel we are bound to do, to insist upon his legal rights. The statute of the United States was not designed simply to protect a man from incriminating himself in a hearing before Congress. It was framed on a broader policy, that every man, when he went before a committee of either House of Congress, could understand that in no wise, by nobody, in no court, could what he said be used against him there in a criminal prosecution.

Mr. President, we submit this matter to the judgment of the court.

Mr. Manager PALMER. Mr. President, I wish to call attention to the section of the Constitution of the United States under which this proceeding is had. I said that this was not a criminal prosecution. Did anybody ever hear that a man could be twice tried and convicted for the same offense? If the first trial is a criminal prosecution, then, of course, he could not be tried and convicted again. The provision of the Constitution is this:

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law.

Now, I say that is an amazing proposition that this judge, who appeared and made a voluntary statement in his own defense, should be objecting here now on the ground that it might tend to criminate him. If there was no other reason for saying that he is not fit to sit as a judge of a Federal court or any other court, it seems to me that the objections of his counsel here on this occasion would be sufficient.

Mr. THURSTON. Mr. President, I wish to make a statement. We are not objecting here on the ground that anything Judge Swayne said would tend to criminate him. We are objecting under the broad provisions of the statute, that it is not evidence.

Mr. BAILEY. If the court please, my own opinion is that this is such an important matter—and it is one that is apt to arise in other impeachment proceedings—that I would like to have the judgment of the Senate pronounced deliberately upon it. If it is entirely agreeable to others I would move that the Senate retire to consider and decide this point.

The PRESIDING OFFICER. The Senator from Texas moves that the Senate retire to its consulting room—

Mr. BAILEY. If the court please, it is suggested to me that we might decide it here and now without retiring, and that is agreeable to me if it can be done.

The PRESIDING OFFICER. The Presiding Officer is entirely ready to rule upon this question, but if the Senator desires that it shall be submitted to the Senate the Presiding Officer prefers that that course shall be taken.

Mr. FORAKER. Mr. President, I suggest that under the rules appli-

cable to the trial of impeachments it is the duty of the Presiding Officer, in the first instance, to make a ruling as to the admissibility of evidence that may be objected to; and then, if any Senator so desires, he may have the question submitted to the Senate. I call the attention of the Senator to Rule VII.

Mr. BAILEY. I have no question about the rule, and I have no question about the propriety, and if the Presiding Officer is ready to decide it, and decides it as I think he will, I shall not, of course, desire an adjournment.

The PRESIDING OFFICER. The general proposition that the admissions of a defendant may be proved does not seem to the Presiding Officer to apply to this case. The statute is that—

No testimony given by a witness before either House, or before any committee of either House of Congress, shall be used as evidence in any criminal proceeding against him in any court, except in a prosecution for perjury committed in giving such testimony.

Now, without deciding technically whether this is testimony which was given by a witness before a committee, or whether it is proposed to use it in a criminal proceeding, or in a court, the Presiding Officer thinks that the intention of the statute is such as to make this evidence inadmissible.

Mr. BAILEY. Mr. President, I desire that question submitted to the Senate, and I shall ask that the court adjourn, if it is necessary, in order that Senators may state their views about it. If it is permissible to make a motion that the Senate adjourn as a court and resume its session in the Chamber as a Senate, I will submit that motion.

Mr. SPOONER. Mr. President, may I inquire of the Senator when he proposes that this question should be considered. Not in legislative session, certainly.

Mr. BAILEY. No. I imagine that we would retire to consult as a court, just as any court in banc which might disagree with the decision of its presiding judge could move that they retire to their consultation chamber. I imagine if a question of practice necessary to be determined at the time should arise before the Supreme Court of the United States and the Chief Justice of that court should rule on it any member of that court might very properly ask for a consultation.

Mr. SPOONER. Mr. President, the rule clearly provides that the Senator from Texas or any other Senator shall have what he now desires. The proper course would seem to be for the Senate sitting as a court of impeachment not to adjourn, but to retire for the consideration of the question.

Mr. BAILEY. I am aware of that rule, but, if the court please, I did not care to inconvenience the Senate by retiring to some other place. I will obviate that inconvenience, if I may be permitted to state my objections here—

The PRESIDING OFFICER. In the opinion of the Presiding Officer, the matter can be discussed in the Senate upon the appeal and the vote be taken here, or the Senate can, if it so desires, retire to its conference chamber for discussion. Either course may be pursued, according to the wish of the Senate.

Mr. BAILEY. I have no desire to ask that the Senate retire, and I shall occupy but a moment on this question.

If the court please, section 103 of the Revised Statutes provides that—

No witness is privileged to refuse to testify to any fact, or to produce any paper, respecting which he shall be examined by either House of Congress, or by any committee of either House, upon the ground that his testimony to such fact or his production of such paper may tend to disgrace him or otherwise render him infamous. (See sec. 859.)

Plainly the purpose of that statute was to enable the committees of either House, or either House itself, to compel the attendance and the testimony of any witness; and it provides, contrary to the rule of law not obtaining in the courts, that the witness shall not be permitted to decline to testify upon the ground that it might disgrace him or tend to render him infamous. Having deprived him of the privilege which he would enjoy before the courts of this country, and having compelled him to testify before its committees, even to his own infamy or disgrace, Congress very wisely then provided that such testimony should not be adduced against him in any criminal proceeding in any court.

But, Mr. President, this is not a criminal proceeding within that statute, and this, in my opinion, is not a court within the meaning of that statute. The Constitution may seem to contemplate that we shall sit as a court when we try the President, because it provides that the Chief Justice of the United States shall preside at such a trial. Whether that was intended, as has been suggested by some, to protect the President against the rulings of the Vice-President, who might succeed to the Presidency in the event of the President's conviction and removal, or whether it was intended, as has been suggested by others, to secure a more certain and a more correct interpretation of the law, I do not undertake at this time to decide.

My own opinion is that the reason which prevailed upon the framers of the Constitution to provide that the Chief Justice shall preside over the Senate when it tries the President on impeachment charges was that the Vice-President might be suspected of having a deep and peculiar personal interest in the result of such a trial. But whether one or the other was the reason, it can not be successfully contended that this is a court within the meaning of section 859, or if it shall be held that this is a court, then it can not be contended that this is a criminal proceeding within that section.

The very provision of the Constitution under which we are proceeding negatives the idea that this is a criminal action, because it expressly provides that no matter what our judgment may be, it only excludes the incumbent against whom it may be pronounced from the honorable office which he holds, and it leaves to the ordinary administration of the criminal jurisprudence of the country the punishment for his criminal acts.

Mr. FULTON. May I ask the Senator from Texas a question?

Mr. BAILEY. Certainly.

Mr. FULTON. I draw the Senator's attention to section 3—

Mr. BACON. Mr. President, I am compelled to call the honorable Senator's attention, through the Chair, to the fact that the rule expressly prohibits colloquies between Senators.

Mr. FULTON. I may be out of order. I simply wanted to ask a question for information.

The PRESIDING OFFICER. The order adopted by the Senate for the trial of this case prohibits colloquies between Senators.

Mr. BAILEY. Mr. President, a judge, in my opinion, may be impeached without being guilty of a crime. He holds his office by a different tenure from that under which other civil officers of the Government enjoy. He holds his office during good behavior, and more than one of the charges in this very case are not a crime. No penalty is denounced against the violation of that provision of the statute which provides that a judge shall reside in the district for which he is appointed, and that his failure to do so shall be a high misdemeanor.

That term is new in legal vernacular. I know of no law books which furnish a distinction between a misdemeanor and a high misdemeanor. Certainly the Constitution does not. Congress has not seen fit to affix a penalty of any criminal nature to this very provision itself, and obviously the whole purpose that Congress had in mind when it declared that a failure to reside in the district for which the judge had been appointed was a high misdemeanor—was that his failure to do so should be an impeachable offense.

I put this case to the court and all the honorable members of it. Suppose there should be nothing before this body but the naked question, Does the honorable judge reside in his district? The law says that if he does not, he is guilty of high misdemeanor. Does any member of the court doubt that if counsel for the respondent or the respondent himself were to rise in this court and say, "I do not reside in my district," there would be the slightest hesitancy in finding him guilty on that charge? Yet, sir, that charge is not a crime, and no Senator will contend that he could be prosecuted in the courts and punished for his failure to reside in his district. It is declared by law, it is true, to be a high misdemeanor, but it is not a crime, because there is no penalty attached to it by the law. Again, sir, suppose a judge should arbitrarily and maliciously disbar an attorney, does any Senator doubt that he could be, and ought to be, impeached? And yet, sir, there is no criminal statute in that behalf provided.

The respondent was not a witness, within the meaning of the statute, when examined before the committee of the House. As has well been suggested by my learned brother near me, whenever a party to a proceeding voluntarily takes the stand, he must be presumed to know the nature of it, and when he volunteers his testimony everything he says can be used. There are States under whose system of criminal jurisprudence the defendant himself may testify. He can not be called by the State; he can not be compelled to take the witness stand in his own behalf, and if he fails or refuses to do so it is error, and reversible error, for the prosecuting attorney to refer to that fact. But when the accused does take the witness stand in his own behalf, then he is not simply permitted to testify to what he thinks may be to his own benefit. He can be cross-examined, and all he says must be received and considered by the jury as testimony in the case.

When the respondent in this case voluntarily appeared before a committee of the House, with a full knowledge of the nature of its inquiry, and proceeded to state any of the facts, it was within the power and duty of that committee to interrogate him as to all the facts, and when he had made his statement there it does not lie with him to claim immunity under this statute.

I believe that the protection afforded by section 859 was made necessary and proper by section 103.

Having deprived the witness of a privilege as ancient almost as courts of justice, it was just and proper that he should not be exposed to prosecution and conviction upon his own testimony, which he had been compelled to give.

I do believe, further, that this is a court within the meaning of that statute. I am sure that this is not a criminal proceeding within the meaning of the statute, because the respondent might be found guilty of a charge that would terminate his office, although he was guilty of no crime.

I am further sure that the respondent in delivering his testimony before the committee of the House was not a witness within the reason or the protection of the statute, and I am still more certain that if he shall be deemed a witness he must be treated as a witness who came voluntarily to testify and whose testimony may be used against him.

Mr. BACON. Mr. President, I apprehend that unless I am mistaken in its construction there has been overlooked a provision of Rule XXIII—

Mr. TELLER. Will the Senator from Georgia allow me? I rise to a question of order.

Mr. BACON. That is exactly what I am on now.

Mr. TELLER. Oh, excuse me.

Mr. BACON. I am on a question of order. I do not think that under Rule XXIII any debate is in order.

Mr. TELLER. That is what I wanted to suggest.

Mr. BACON. I will either read the rule myself—

Mr. TELLER. Read it.

Mr. BACON. It is Rule XXIII, on page 177 of our Manual.

RULES FOR IMPEACHMENT TRIALS.

All the orders and decisions shall be made and had by yeas and nays, which shall be entered on the record, and without debate, subject, however, to the operation of Rule VII, except when the doors shall be closed for deliberation, and in that case no member shall speak more than once on one question, and for not more than ten minutes on an interlocutory question, and for not more than fifteen minutes on the final question, unless by consent of the Senate, to be had without debate.

That is with closed doors. The rule is peremptory that except when then doors are closed there must be no debate, short or long. Rule VII, which is referred to in Rule XXIII, is in these words:

The Presiding Officer of the Senate shall direct all necessary preparations in the Senate Chamber, and the Presiding Officer on the trial shall direct all the forms of proceedings while the Senate are sitting for the purpose of trying an impeachment, and all forms during the trial not otherwise specially provided for. And the Presiding Officer on the trial may rule all questions of evidence and incidental questions, which ruling shall stand as the judgment of the Senate unless some Member of the Senate shall ask that a formal vote be taken thereon, in which case it shall be submitted to the Senate for decision; or he may at his option, in the first instance, submit any such question to a vote of the Members of the Senate. Upon all such questions the vote shall be without a division, unless the yeas and nays be demanded by one-fifth of the Members present, when the same shall be taken.

I read Rule VII to show that Rule XXIII does not in any manner modify the provision of Rule VII as to debate except when the Senate is in secret session; "when the doors shall have been closed," in the language of the rule. I do not think that debate upon any question which may arise is in order. Senators will perceive necessarily that a contrary rule would in its operation protract the session of a court of impeachment beyond the possibility of any practical termination.

The PRESIDING OFFICER. The Presiding Officer is of opinion that the point of order taken by the Senator from Georgia is well taken, and that the only exception is that contained in Rule VII. Rule XXIII provides:

All orders and decisions shall be made and had by yeas and nays, which shall be entered on the record, and without debate, subject, however, to the operation of Rule VII, except when the doors shall be closed for deliberation.

The exception in Rule VII is that upon all such questions the vote shall be without a division. But Rule XXIII provides that all orders and decisions shall be by yeas and nays. The exception referred to in Rule VII is upon questions relating to the introduction of evidence and incidental questions; if the vote of the Senate is asked, it may be decided without a division, unless the yeas and nays are demanded.

The Presiding Officer thinks the point is well taken.

Mr. BAILEY. If the court please, I was rather of that impression myself, and I did not proceed to deliver my opinion in respect of this matter until it was suggested that it was in order. I have no desire, of course, to transgress the rules, but every desire to respect them.

The PRESIDING OFFICER. If there was any error it was the error of the Presiding Officer in permitting the matter to be discussed.

Mr. BAILEY. It is very generous of the Presiding Officer to acknowledge it.

Mr. BACON. I desire to state that I did not call the Senator from Texas to order and interrupt him, because he had the permission of the Chair to proceed.

Mr. TELLER. I move that the doors be closed for the deliberation of the Senate under Rule XXIII.

The PRESIDING OFFICER. Does the Senator desire that the doors shall be closed and all but the Senate excluded—

Mr. TELLER. I think it is more convenient to the Senate, and I think we should consult our own convenience in this case.

Mr. SCOTT. Let us have a vote on that.

Mr. HOPKINS. Under the rule what number of Senators does it require to go into secret session when we are sitting as a court?

The PRESIDING OFFICER. A majority vote. The Senator from Colorado moves—

Mr. TELLER. If there is any disposition to go on with this trial in the irregular way in which it has been proceeding, I will withdraw the motion, if it is going to inconvenience the Senate or delay the matter. But I insist that this whole proceeding has been contrary to the rule and not well calculated to bring it to a speedy conclusion.

The PRESIDING OFFICER. Does the Senator from Colorado insist upon his motion?

Mr. TELLER. I withdraw it.

The PRESIDING OFFICER. The motion is withdrawn.

Mr. MORGAN. Mr. President, I desire to have the Presiding Officer state what is the question now before the court.

The PRESIDING OFFICER. Objection was made to the introduction of certain evidence. The offer on the part of the managers of the House to prove what Judge Swayne stated before a committee of the House when he appeared voluntarily before that committee was objected to by counsel for the respondent. The presiding officer ruled that, without inquiring technically whether it was testimony which Judge Swayne gave, or technically whether this was a criminal court, that

the intention of the statute referred to was such as made it proper to exclude the testimony; and from that the Senator from Texas took an appeal.

Mr. MORGAN. The question of the appeal is before the court?

The PRESIDING OFFICER. The question on appeal is before the Senate.

Mr. MORGAN. I wish to ask some of the gentlemen who have made themselves familiar with this matter whether there is any provision in the rule affecting the decision of appeals in the manner we are now proceeding to do?

The PRESIDING OFFICER. The appeal under Rule VII may be decided without division, unless the yeas and nays are demanded, in which case they will be ordered by a second.

Mr. FORAKER. Mr. President, I submit it is not technically correct to call it an appeal. The rule provides that when the Chair has ruled, it may, if any Senator so requests, submit the question to the Senate. I understand this is simply a request that the question be submitted to the Senate.

Mr. BACON. I understand, in pursuance of what the Senator from Ohio has just said, that the question will not be upon sustaining the ruling, but the question in its original form will be submitted to the Senate, whether the evidence is or is not admissible.

Mr. MORGAN. That is exactly what I was trying to get at.

The PRESIDING OFFICER. The Presiding Officer, then, will submit to the Senate the question whether the proposed evidence is admissible.

Mr. FORAKER. The question submitted to the Senate should be whether or not the objection of counsel for the respondent shall be sustained. So an affirmative vote would sustain the objection.

Mr. DANIEL. The Senator from Ohio, can not be heard here. We would be glad if he would repeat his statement.

Mr. FORAKER. I was merely suggesting to the Presiding Officer that the question to be submitted should be whether or not the objection of counsel for the respondent shall be sustained.

Several SENATORS. Oh, no.

Mr. FORAKER. That would be the form, I should think, of the submission. It is important only that we may know which way to vote.

The PRESIDING OFFICER. This is the rule:

And the Presiding Officer on the trial may rule [on] all questions of evidence and incidental questions, which ruling shall stand as the judgment of the Senate, unless some member of the Senate shall ask that a formal vote be taken thereon, in which case it shall be submitted to the Senate for decision; or he may, at his option, in the first instance, submit any such question to a vote of the members of the Senate.

The Presiding Officer was of the opinion that the question was whether the evidence was admissible.

Mr. BLACKBURN. That is the question.

Mr. HOPKINS. Would not the form under that rule then be as to whether the decision of the Chair shall stand as the judgment of the court?

Several SENATORS. No.

The PRESIDING OFFICER. The Presiding Officer thinks the question is whether the evidence offered is admissible.

Mr. CULLOM. In support of the ruling of the Presiding Officer I desire to read a paragraph from the trial of the President of the United States years ago:

The CHIEF JUSTICE. Senators, the Chief Justice is unable to determine the precise extent to which the Senate regards its own decisions as applicable. He has under-

stood the decision to be that, for the purpose of showing intent, evidence may be given of conversations with the President at or near the time of the transaction. It is said that this evidence is distinguishable from that which has been already introduced. The Chief Justice is not able to distinguish it, but he will submit directly to the Senate the question whether it is admissible or not.

The PRESIDING OFFICER. The Presiding Officer then submits to the Senate the question whether the evidence offered by the managers on the part of the House is admissible.

Mr. BLACKBURN. That is the question.

Mr. FORAKER. An affirmative vote admits the testimony and a negative vote excludes it.

Mr. BLACKBURN. That is right.

Mr. FORAKER. It is presented in that form.

Mr. BAILEY. I should like to have the yeas and nays.

The yeas and nays were ordered; and having been taken, resulted—yeas 28, nays 45, as follows:

Yeas, Allison, Bailey, Bard, Bate, Berry, Blackburn, Carmack, Clark, Montana; Clarke, Arkansas; Clay, Crane, Daniel, Dietrich, Foster, Louisiana; Gibson, Latimer, Long, McEnery, McLaurin, Mallory, Martin, Morgan, Overman, Simmons, Spooner, Stone, Taliaferro, Teller—28.

Nays—Alger, Allee, Ankeny, Bacon, Ball, Burnham, Burrows, Clapp, Culberson, Cullom, Dick, Dillingham, Dryden, Dubois, Fairbanks, Foraker, Frye, Fulton, Gallinger, Gamble, Gorman, Hale, Hansbrough, Heyburn, Hopkins, Kean, Kearns, Kittredge, Lodge, McComas, McCreary, McCumber, Millard, Nelson, Patterson, Perkins, Pettus, Platt of New York, Proctor, Quarles, Scott, Smoot, Stewart, Warren, Wetmore—45.

Not voting—Beveridge, Clark of Wyoming, Cockrell, Depew, Dilliver, Elkins, Foster of Washington, Knox, Money, Newlands, Penrose, Platt of Connecticut—12.

The PRESIDING OFFICER. On the question whether the evidence offered by the managers for the House is admissible the yeas are 28, the nays 45. So the Senate decides that the evidence is not admissible. Are there further witnesses?

Mr. Manager POWERS. Mr. President, I have evidence largely of a documentary character in support of the twelfth or last article, but it is already so late that I had assumed perhaps the court would not care to receive it at this time in the day. I am perfectly content to proceed if the court so desires.

Mr. HIGGINS. On the part of the respondent we wish to interpose no objection to going on as long and as late and as rapidly as we can to advance this trial.

Mr. Manager POWERS. Mr. President, I offer in evidence a certified transcript of the record in what is known as the "O'Neal case."

Mr. BACON. Mr. President, it is impossible for us to hear anything that is being said, on account of confusion in the Chamber.

The PRESIDING OFFICER. The Senate will please be in order, and Senators will cease conversation.

Mr. Manager POWERS. I offer in evidence, Mr. President, a certified copy of the court record in what is known as the "O'Neal case." This record is made up of what is known as the complaint upon which the order of attachment in this contempt case was issued, and also a demurrer to the original complaint, which appears to have been dis-

posed of, and also the affidavit of the respondent, which is an answer to the complaint, together with other documents showing the disposition of that case.

It has been agreed between counsel for the respondent and the managers that this record may go into evidence without being read before the court. It is very long and would occupy possibly an entire session if it were read. But I assume, Mr. President, in order to have it go into evidence without being read, it is necessary that we should have the permission of the court to do so. So I tender this record with the request that it become a part of the evidence in this case and be printed as such without first being read to the court.

The PRESIDING OFFICER. If there be no objection, it will be entered without reading.

The transcript referred to is as follows:

In the United States district court in and for the northern district of Florida. The
United States v. W. C. O'Neal.

Be it remembered, that on the 10th day of November, A. D. 1902, one Adolph Greenhut, of the city of Pensacola, came into court and filed therein an affidavit in regard to certain acts of one W. C. O'Neal, and on the same day the court made an order in the said matter, which affidavit and order are in the words and figures following, to wit:

"In the United States district court, northern district of Florida, at Pensacola. In the matter of Scarritt Moreno, bankrupt. No. 3.

"UNITED STATES OF AMERICA,

"Northern District of Florida, City of Pensacola, ss:

"Adolph Greenhut, of the city of Pensacola, in the district aforesaid, being duly sworn according to law, on his oath, doth depose and say:

"That herefore, to wit, on the 29th day of August, 1902, one Scarritt Moreno filed in the honorable the district court of the United States in and for the northern district of Florida, at Pensacola, his petition to be adjudicated a bankrupt and to obtain the benefits of the acts of Congress of the United States relating to bankruptcy. That thereafter such proceedings were had upon said petition in said United States district court, that on September 15th, 1902, affiant was duly appointed trustee of the estate of the above-named Scarritt Moreno, bankrupt, which said appointment of deponent as trustee was then and there approved by the said court.

"That thereafter, to wit, on the day and year last aforesaid, affiant accepted said appointment and filed his bond as such trustee, which said bond was duly approved by E. K. Nichols, esq., referee in bankruptcy, and at the same time deponent took the oath of office as required by law, and thereupon he became charged with the duties and clothed with the authority appertaining to a trustee in bankruptcy under the laws of the United States, and from thence hitherto he occupied and is now occupying said trusteeship, amenable to and subject to the orders of the said the honorable district court of the United States in and for the northern district of Florida.

"That affiant was, by his counsel, advised that it was his duty, as trustee of the estate of said Scarritt Moreno as aforesaid, to institute a certain suit or action in equity for the purpose of having certain property purchased by the said Scarritt Moreno, bankrupt, the title to which was taken by the said Scarritt Moreno in the name of his wife, brought into the said United States district court as a part of the estate of said bankrupt, to be there administered as required by law, and for the further purpose of having certain mortgages on said property decreed and declared to be null, void, and of no effect. That thereupon, in the afternoon of Saturday, the 18th day of October, 1902, through his counsel, he, as trustee as aforesaid, and in the performance of his duty as aforesaid as an officer of the said United States district court, caused to be filed in the circuit court of Escambia County, State of Florida, his certain bill of complaint, therein and thereby, among other things seeking the relief above referred to.

"That, by the advice of his counsel, Scarritt Moreno, Susie R. Moreno, his wife, the American National Bank of Pensacola, the Citizens' National Bank of Pensacola, and others, were made parties defendant in and to said bill of complaint, and that

upon the filing of the said bill of complaint suit was commenced against the defendants named in said bill of complaint. That all of the proceedings above referred to were taken and had by affiant as an officer of the district court of the United States in and for the northern district of Florida, and in the due, proper, and faithful performance of his duty as such officer, and were necessarily had and taken under the law and his oath of office.

"That on Monday, the 20th day of October, A. D. 1902, between the hours of nine and ten o'clock a. m., affiant was standing in the door of the office of the store owned and conducted by him, situated at No. — East Government street, in the city of Pensacola aforesaid, which said office was occupied by deponent, among other things, for the purpose of performing the duties devolving upon him as trustee as aforesaid, and in which said office this deponent kept and had the custody of the papers, books, etc., relating to and connected with the estate of said Scarritt Moreno, bankrupt, in deponent's hands as trustee as aforesaid. That at the said time deponent was engaged in conversation with one Alex. Lischkoff, when one, W. C. O'Neal, who was at the said time president of said American National Bank, of Pensacola, one of the defendants in the action or suit heretofore referred to, approached to where affiant was standing and conversing as aforesaid and stated to affiant that as soon as he, affiant, was at liberty, he, said O'Neal, desired to speak to him; thereupon affiant stated in effect that said O'Neal could speak to him then, and affiant entered his said office and stood alongside of a standing desk about five feet from the door of said office.

"Said O'Neal followed affiant into said office and stood opposite to affiant, and distant only a few feet. That thereupon said O'Neal, in effect, asked this affiant why he, affiant, had brought the name of his, the American National Bank, into the Moreno suit (meaning thereby the suit above referred to, brought by affiant, as trustee, against Scarritt Moreno and others); that affiant replied that he, O'Neal, could see his, affiant's, attorneys in relation thereto; that said O'Neal made some remark to the effect that he would not do so, and stated to affiant that he, affiant, was no gentleman; that affiant thereupon said that he, affiant, was as much of a gentleman as he, the said O'Neal, was; that thereupon said O'Neal said, 'we'll settle the matter, and turned about as if he intended to leave the premises of deponent, walking toward the door of said office and out upon the sidewalk.

"That affiant had no thought, idea, or suspicion that said O'Neal intended any personal violence toward him, and quietly started forward from where he was so standing, as aforesaid, towards the door of said office leading into the street. That affiant barely reached the doorway of said office when said O'Neal, without any provocation, without any notice to deponent of his murderous intention, turned and wheeled suddenly about with his knife in his hand, and with intent to kill and murder deponent, struck at him, deponent's, throat with said knife, and cut deponent at a point behind the left ear, cutting through lower portion of said left ear, then across the left cheek, ending at left corner of mouth, and immediately thereafter said O'Neal cut and stabbed deponent four further times: (1) on left side over lower ribs; (2) upon left hip; (3) on left elbow; and (4) on right hand. That the cuts, wounds, and stabs so inflicted by said O'Neal upon deponent were of a serious and dangerous character, and from said time to the present deponent has been unable to attend to and perform his duties as trustee as aforesaid, and has been confined to his home, except for a few hours on two or three different days, and has ever since been, and is now, under the care and treatment of a physician, who is attending to his wounds.

"That said assault and attempt to murder was committed by said O'Neal, as aforesaid, solely because and for the reason that affiant, as an officer of the United States district court, in and for the northern district of Florida, had instituted the suit above set forth against the said American National Bank and others, and to interfere with and prevent deponent from executing and performing his duties as such officer of said court, and the said O'Neal did, by the said murderous assault, interfere with the management of the said trust by deponent as an officer of the said court, and did for a long period of time, to wit, from the said 20th day of October, 1902, up to the present time, by reason of the injuries inflicted by him upon deponent as aforesaid, prevent and deter deponent from performing the duties incumbent upon him, deponent, as such officer, and did thereby interfere with the management by deponent as such officer of the estate of the said Scarritt Moreno, bankrupt.

"A. GREENHUT."

"Sworn to and subscribed before me this 7th day of November, A. D. 1902.

"E. K. NICHOLS,
"Referee in Bankruptcy."

202 SWAYNE IMPEACHMENT PROCEEDINGS IN THE SENATE.

United States district court, northern district of Florida, at Pensacola. In the matter of Scarritt Moreno, bankrupt.

Upon reading and filing the affidavit of Adolph Greenhut, trustee,
It is ordered, That W. C. O'Neal show cause before this court on the 17th day of November, A. D. 1902, at 10 o'clock a. m., why he, the said W. C. O'Neal, should not be adjudged guilty of contempt of this court on account of the matters and things set forth and alleged in said affidavit; and,

It is further ordered, That a copy of this order, together with a copy of the said affidavit, be served upon the said W. C. O'Neal forty-eight hours before the time at which this order is made returnable. And I hereby appoint B. C. Tunison, esq., special counsel to represent the court in the prosecution hereof.

Done and ordered this 10th day of November, A. D. 1902.

CHAS. SWAYNE, Judge.

(Endorsements): U. S. dist. ct. North. dist. Fla. In re Scarritt Moreno, bankrupt. Affidavit and order on W. C. O'Neal. Filed November 10, 1902. F. W. Marsh, clerk. By H. P. Holmes, D. C. Tunison & Loftin, Pensacola, Fla.

And thereafter, to wit, on the 17th day of November, A. D. 1902, the respondent to said rule, by his attorneys, came into court and filed therein a demurrer to the said rule, which demurrer is in the words and figures following, to wit:

"In the United States district court, northern district of Florida.

"In the matter of rule upon W. C. O'Neal to show cause why he should not be committed for contempt.

"The said W. C. O'Neal, respondent to said rule, demurs to the said rule, and the affidavit thereto attached, upon the following grounds, to wit:

"1. That the affidavit of A. Greenhut attached to the rule to show cause does not show that the respondent has committed any offense of which this court has jurisdiction in this proceeding.

"2. That said affidavit does not show that the respondent has done any act punishable by this court as a contempt thereof.

"3. That said affidavit does not show the commission by the respondent of any act of contempt against this court.

"BLOUNT & BLOUNT,

"Attorneys for Respondent.

"I, Wm. A. Blount, of counsel for respondent, certify that in my opinion the foregoing demurrer is well founded in point of law and make oath that it is not interposed for delay.

"W. A. BLOUNT.

"Sworn to and subscribed before me this 15th day of November, A. D. 1902.

"[SEAL.]

A. C. BINKLEY, Notary Public.

"(Endorsements: In re rule to W. C. O'Neal to show cause, etc. Demurrer to rule. Filed at 10 o'clock a. m. November 17th, 1902. F. W. Marsh, clerk. Blount & Blount, attys.)"

And thereafter, to wit, on the 21st day of November, A. D. 1902, the following order was made and entered of record in the said cause, to wit:

"United States district court, northern district of Florida. In the matter of Scarritt Moreno, bankrupt. On rule, etc., v. W. C. O'Neal.

"This cause coming on to be heard upon demurrer to rule filed by respondent, and the same having been argued by counsel, it is ordered that the said demurrer be, and the same is hereby, overruled, and said respondent is granted leave to file answer, which answer is to be filed on or before November 22, 1902.

"To which ruling respondent duly excepted.

"Done and ordered this 21st day of November, 1902.

"CHAS. SWAYNE, Judge.

"(Indorsements: In re W. C. O'Neal. Contempt. Filed at 11 o'clock a. m. November 21st, 1902. F. W. Marsh, clerk.)"

No. 4.

And thereafter, and on the said day, to wit, on the 22d day of November, A. D. 1902, the following answer was filed in the said cause by the respondent therein, to wit:

"In United States district court, northern district of Florida, at Pensacola. In re rule upon W. C. O'Neal to show cause why he should not be punished for contempt upon the statement set forth in the rule and the affidavit of A. Greenhut thereto attached.

"Respondent, for answer to the rule and to the said affidavit, says:

"1. That he knows in part and presumes in part that the allegations of the first paragraph of the said affidavit are true.

"2. That he knows in part and presumes in part that the allegations of the second paragraph of the said affidavit are true.

"3. That the statements in the third paragraph of said affidavit are in part true and in part untrue, and that the following statement of the facts leading up to, accompanying, and surrounding the affray between himself and the said Greenhut on October 20, 1902, are true.

"That the said Greenhut had been from the organization of the American National Bank of Pensacola in October, 1900, a stockholder and director thereof; that while he was such stockholder and director the said bank received from the said Scarritt Moreno a certain mortgage for the sum of \$13,000 to secure certain indebtedness due or to become due by the said Moreno to the said bank; that the said transaction was an honest and bona fide transaction, and that the said Scarritt Moreno was and became indebted to the said bank in a large sum of money secured by the said mortgage; that the said Greenhut was cognizant of the whole of said transaction and knew of its bona fides and honesty, as he did of the subsequent bona fide transfer thereof to Alex McGowan, S. J. Foshee, and H. L. Covington for a large consideration paid by them to the said bank, and that the bill filed by the said Greenhut as trustee as aforesaid was filed to declare the said mortgage and transfer null and void, although the said Greenhut knew them to have been entirely honest, straight, and valid transactions.

"That prior to the said 20th of October, said A. Greenhut became indorser upon certain negotiable paper of the said Scarritt Moreno to the said bank to an amount of about \$1,500; that the said Greenhut refused to make good his said indorsement, or to pay to the said bank the money due upon said paper at its maturity or thereafter, and before the said 20th day of October the said bank had been compelled to sue him in the circuit court of Escambia County, Fla., upon said paper, and that in the said suit the said Greenhut interposed a defense which this respondent believed and believes to be untrue, and known to the said Greenhut to be untrue.

"That on the morning of the 20th of October, 1902, respondent was proceeding from his residence to his office in the said bank, in the direct and usual path pursued by him, and he saw the said Greenhut standing at the door of his said store office upon the said path of respondent, and it suddenly occurred to respondent to reproach the said Greenhut with having brought the suit mentioned in his affidavit against the said bank when he, the said Greenhut, knew, as aforesaid, that there was no foundation therefor; and thereupon the respondent stated to the said Greenhut that he wished to speak to him as soon as he was at liberty, he then being engaged in a conversation with one A. Lischkoff.

"The said Greenhut answered that respondent could speak to him then, and both he and respondent stepped to the rear of the said Greenhut's office, when the respondent reproached the said Greenhut with his attitude toward the bank of which he had been a stockholder and director, both in his refusal to pay the negotiable paper hereinbefore mentioned and in the bringing of an unfounded suit against it. The conversation, however, concerning chiefly the bringing of the said suit against the said bank, hot words passed between the said respondent and said Greenhut, during which the said Greenhut said that he would "do respondent up," to which respondent answered that he did not come to have a disturbance and would not fight in his office except in self-defense, but that if he had to fight he would do so if the said Greenhut would come out upon the street.

"When the respondent turned to leave the office, and when he had nearly reached the door, he turned and said to the said Greenhut: 'Well, you know you lied about the Moreno acceptance, for you said that you would pay it,' the Moreno acceptance being the negotiable paper hereinbefore mentioned. As respondent turned, saying this, he noticed that the said Greenhut was following him, and as he said it, the

said Greenhut (who was short, stout, heavily built, and apparently much more muscular than respondent) struck the respondent (who is thin and feeble) and forced him against the railing in the said office. The respondent shoved the said Greenhut a little away from him, but he, the said Greenhut, instantly recovered and rushed at respondent with his arm uplifted to strike, when respondent drew from his pocket a small pocketknife and opened it in order to protect himself, and upon said Greenhut rushing upon him, cut him therewith, while the said Greenhut was still following and endeavoring to strike him.

"That it is not true that the respondent at any time said to the said Greenhut that he, respondent, would settle the matter, but the facts are as hereinbefore stated; that respondent does not know how many or where located were all the wounds inflicted with the said knife, and hence he is unable to admit or deny the allegations of the said affidavit relating thereto; that it is not true that the use of the said knife was with the intent to kill and murder the said Greenhut, or to do him any bodily harm, but respondent avers that it was entirely from the instinctive desire of respondent to defend himself from the attack of a larger and more powerful man.

"That it is not true that the assault charged in the said affidavit was committed by the respondent solely because and for the reason that the said Greenhut had instituted the suit aforesaid against the said American National Bank or to interfere with and prevent him, the said Greenhut, from exercising and performing his duties as an officer of this court; that in truth the respondent never contemplated at any time any interference with the said Greenhut as trustee as aforesaid or contemplated any affray with the said Greenhut or any personal conflict with him until he saw the threatening attitude of the said Greenhut toward him, the respondent, as hereinbefore set forth, and that so far as respondent can determine from the actions of the said Greenhut, who was the aggressor as aforesaid, the cause of the said affray was the remark of respondent to the said Greenhut concerning the said Greenhut's action in repudiating his obligation to pay the said acceptance.

"And respondent disclaims the existence on his part at any time of any intent to interfere with, prevent, impede, or delay the said Greenhut in the prosecution of the said suit against the said bank, or to interfere with or impede or prevent him in any wise in the execution or performance of any of his duties as such trustee; and specially disclaims any attempt to do any act which might savor in the slightest degree of contempt of this honorable court.

"W. C. O'NEAL.

"W. C. O'Neal, being duly sworn, says that he has read the foregoing answer and that the statements therein made are true.

"W. C. O'NEAL."

"Sworn to and subscribed before me this 18th day of November, A. D. 1902.

"[SEAL.]

"JNO. PFEIFFER,
"Notary Public.

"BLOUNT & BLOUNT,
"Attorneys for Respondent.

"(Endorsements: In re rule upon W. C. O'Neal. Answer of respondent. Filed November 22nd, 1902. F. W. Marsh, clerk. Blount & Blount, Pensacola, Fla.)"

And on the 4th day of December, A. D. 1902, the following order was made and entered of record in the foregoing cause, to wit:

"United States district court, northern district of Florida, at Pensacola. United States of America v. W. C. O'Neal. Contempt.

"It is ordered that the clerk issue and the marshal serve, at the cost of the United States, process of subpoena ad test., directed to A. L. Rettinger, R. A. Hyer, Lep. Mayer, A. Lischkoff, F. G. Renshaw, W. J. Forbes, F. C. Brent, Donald McClellan, Rev. P. H. Whaley, William E. Anderson, L. Hilton Green, William Fisher, Boyken Jones, John W. Frater, and Jacob Kryger, witnesses on behalf of the United States, returnable December 8, 1902, at 10 o'clock a. m.

"CHAS. SWAYNE, Judge.

"DECEMBER 3, 1902.

"(Indorsed: The United States v. W. C. O'Neal. Order for witnesses. Filed December 4, 1902. F. W. Marsh, clerk.)"

No. 5.

And afterwards, to wit, on the 9th day of December, A. D. 1902, the following proceedings were had in open court, to wit:

"In the matter of the rule upon W. C. O'Neal to show cause why he should not be punished for contempt of this court as to the matters and things set forth in the affidavit of Adolph Greenhut.

"This cause coming on to be heard at this time on the affidavit of Adolph Greenhut, in the matter of the bankruptcy proceedings in the estate of Scarritt Moreno, and upon the rule to show cause why he should not be punished for contempt of this court, issued thereon by this court against W. C. O'Neal, and upon the answer of the said respondent, W. C. O'Neal, to the said rule and affidavit, and the court having heard the testimony and the witnesses for the prosecution and for the respondent, and after argument of counsel and consideration by the court, and the court being advised in the premises, the court doth find as follows:

"That the affidavit of Adolph Greenhut, upon which this rule was granted, is true, and that the respondent is guilty of the acts and things set forth therein, in the manner and form therein alleged, and that the same constitute and are a substantial contempt of this court; and it is therefore

"Ordered, adjudged, and directed, That the said respondent, W. C. O'Neal, be taken hence to the county jail of Escambia County, at Pensacola, in the State of Florida, and there confined for and during the period of sixty days, and that he stand committed until the terms of this sentence be complied with, or until he be discharged by due process of law.

"And the said respondent, W. C. O'Neal, at this time having sued out his writ of error to the Supreme Court of the United States, and made and entered into a bond and undertaking, conditioned as required by law and duly approved by this court, it is therefore ordered that the said writ of error be and operate as a supersedeas to the judgment heretofore rendered in this cause."

And afterwards, to wit, on the 9th day of December, A. D. 1902, the following petition and order thereon were filed in the foregoing cause, to wit:

"In the United States district court, northern district of Florida, Pensacola. W. C. O'Neal, plaintiff in error, v. The United States of America, defendant in error.

"Proceeding on the rule upon the said W. C. O'Neal to show cause why he should not be punished for contempt in assaulting A. Greenhut, a trustee in bankruptcy in said court:

"The said W. C. O'Neal, defendant, feeling aggrieved at the judgment and sentence of the said court rendered in above cause on the 9th day of December, A. D. 1902, prays an allowance of a writ of error therefrom to the Supreme Court of the United States for the purpose of a review of the judgment heretofore rendered in said cause in favor of plaintiff, and against the defendant, overruling the demurrer of the defendant (to the rule and affidavit thereto attached), asserting the want of jurisdiction of this court to render any judgment of contempt against the defendant upon the facts and other causes set forth in the said affidavit, this court holding and deciding that it had such jurisdiction, and that a transcript of the record and pleadings of the said cause, duly authenticated, sufficient to present to the said Supreme Court on said action of jurisdiction shall be sent to the said court.

"C. H. LANEY,
"BLOUNT & BLOUNT,
"Attorneys for W. C. O'Neal.

"In the United States district court, northern district of Florida, Pensacola. W. C. O'Neal, plaintiff in error, v. The United States of America, defendant in error.

"The defendant, W. C. O'Neal, considering himself aggrieved by the rule of this court in said cause, in which final judgment was rendered on the 9th day of December, A. D. 1902, holding upon demurrer to the rule and affidavit attached, that it had jurisdiction upon the facts stated in said affidavit to try and sentence said defendant for contempt of this court, having on this day filed in this court his assignment of errors, and his petition praying for a writ of error to the judgment and proceedings in said cause to the Supreme Court of the United States upon the said question

of jurisdiction, and that a transcript of the proceedings as therein prayed may be made and sent to the Supreme Court:

"Now, on this 9th day of December, A. D. 1902, it is ordered and considered by the court that the said writ of error is to be allowed and awarded upon the said question of jurisdiction alone, as prayed for. And this court thus certifies to the Supreme Court for its decision the question of jurisdiction alone of this court over this cause, as follows:

"Did this court have jurisdiction to try and punish the said defendant for contempt thereof upon the facts and for the causes stated in the said rule and affidavit?

"CHAS. SWAYNE,
"Judge District Court of the United States, Northern District of Florida.

"(Endorsements:) W. C. O'Neal vs. The United States of America. Petition and order allowing writ of error. Filed December 9th, 1902. F. W. Marsh, clerk. Blount & Blount, Pensacola, Fla."

And on the same day, to wit, on the 9th day of December, A. D. 1902, the following assignment of errors was duly filed in the foregoing cause, to wit:

"In the United States district court, northern district of Florida. W. C. O'Neal, plaintiff in error, v. United States of America, defendant in error.

"Proceeding upon the rule upon the said W. C. O'Neal to show cause why he should not be punished for contempt in assaulting A. Greenhut, a trustee in bankruptcy of the said court.

"The plaintiff in error assigns as error in the record and proceedings below in the foregoing cause:

"1. The overruling by the said district court of that portion of the demurrer of the defendant to the rule and affidavit asserting that the court did not have jurisdiction; asserting that such rule and affidavit did not show that the respondent had committed any offense of which the said court had jurisdiction in the said proceeding; and the holding of the court in overruling such demurrer, that it did have such jurisdiction.

"2. The further assertion by the said district court of jurisdiction in the cause by the rendition of judgment, adjudging the plaintiff in error guilty of contempt, as alleged in the rule and affidavit, and imposing punishment therefor.

"C. H. LANEY,
"BLOUNT & BLOUNT,
"Attorneys for Plaintiff in Error.

"(Endorsements:) W. C. O'Neal vs. The United States of America. Assignment of errors. Filed December 9th, 1902. F. W. Marsh, clerk."

And on the same day, to wit, on the 9th day of December, A. D. 1902, the following citation issued out of the said court and was duly served upon the said defendant in error, to wit:

"To the United States of America:

"You are hereby cited and admonished to be and appear at a term of the United States Supreme Court to be holden at the city of Washington, District of Columbia, on the 6th day of January, A. D. 1903, pursuant to a writ of error filed in the clerk's office of the district court of the United States for the northern district of Florida, at Pensacola, wherein W. C. O'Neal is plaintiff in error, and you are defendant in error, and show cause, if any there be, why the judgment and sentence mentioned in said writ of error should not be corrected and speedy justice done to the parties in that behalf.

"Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, this 9th day of December, in the year of our Lord one thousand nine hundred and

"Signed this 9th day of December, A. D. 1902.

"CHAS. SWAYNE, Judge.

"Service of the foregoing citation acknowledged this 9th day of December, 1902.

"B. C. TUNISON,
"Sp'ly Appointed Atty. for Prosecution.

"JOHN EAGAN,
"United States Attorney for Northern District of Florida.

"(Endorsements: W. C. O'Neal v. The United States of America. Citation. Filed December 9th, 1902. F. W. Marsh, clerk.)"

And on the same day, to wit, on December 9, 1902, the following bond was entered into and filed in the said cause by the said plaintiff in error, to wit:

"Know all men by these presents:

"That we, W. C. O'Neal, as principal, and H. L. Covington and W. J. Hannah, as sureties, are held and firmly bound unto the United States of America, in the full and just sum of one thousand dollars (\$1,000.00), to be paid to the said United States of America, which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

"Signed and sealed this 9th day of December, A. D. 1902.

"Whereas lately, at the November term, A. D. 1902, of district court of the United States for the northern district of Florida, in a suit pending in the said court between the United States of America, plaintiff, and the said W. C. O'Neal, defendant, the same being a proceeding upon a rule upon the said W. C. O'Neal to show cause why he should not be punished for contempt for an assault upon A. Greenhut, trustee, in Pensacola (of the said district court), and a judgment and sentence was rendered against the said W. C. O'Neal, and he has obtained a writ of error from the United States Supreme Court to reverse the judgment and sentence in the aforesaid suit, a citation directed to the United States of America citing and admonishing the United States of America to be and appear in the United States Supreme Court at the city of Washington, District of Columbia, thirty (30) days after the date of this citation, which citation has been duly served.

"Now, the condition of the above obligation is such that if the said W. C. O'Neal shall appear in the United States Supreme Court at a term thereof to be held in the city of Washington, District of Columbia, on the 6th day of January, A. D. 1903, and from time to time thereafter during said term, and from term to term and from time to time until finally discharged therefrom, and shall abide and obey all orders made by the United States Supreme Court in said cause, and shall surrender himself in execution of the judgment and sentence appealed from as said court may direct, if the judgment and sentence by the said district court made, shall be affirmed by the said United States court, then the above obligation shall be void, else to remain in full force and virtue.

"W. C. O'NEAL.	[SEAL.]
"H. L. COVINGTON.	[SEAL.]
"WM. J. HANNAH.	[SEAL.]

"Taken and approved this 9th day of December, 1902.

"CHAS. SWAYNE, Judge.

"Indorsements: W. C. O'Neal v. The United States of America. Supersedeas bond. Filed December 9, 1902. F. W. Marsh, clerk. Blount & Blount, Pensacola, Fla."

Whereupon, on the 9th day of December, A. D. 1902, the following writ of error was issued out of the said court and duly served upon the defendant in error, to wit:

"The United States of America:

"The President of the United States to the honorable the judge of the district court of the United States for the northern district of Florida, greeting:

"Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said district court before you, between the United States of America and W. C. O'Neal, a manifest error hath happened, to the great damage of the said defendant, W. C. O'Neal, as by his complaint appears. We being willing that error, if any hath been, shall be duly corrected, and full and speedy justice done to the parties aforesaid, in this behalf, do command you if judgment therein be given, that then, under your seal distinctly and openly you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, in the District of Columbia, on the 6th day of January, 1903, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the customs and laws of the United States should be done.

"Witness, the Hon. Melville W. Fuller, Chief Justice of the said Supreme Court, this 9th day of December, in the year of our Lord one thousand nine hundred and two.

"[SEAL.]

F. W. MARSH,

"Clerk of the District Court for the Northern District of Florida.

"A true copy of the original as issued this day.

"F. W. MARSH, Clerk.

"(Indorsements: W. C. O'Neal v. The United States of America.)

"Writ of error, filed December 9, 1902. F. W. Marsh, clerk."

And thereafter, to wit, on the 11th day of June, A. D. 1903, the following mandate was received and filed in the foregoing cause, to wit:

"UNITED STATES OF AMERICA, ss:

"*The President of the United States of America to the honorable the judge of the district court of the United States for the northern district of Florida, greeting:*

"Whereas lately in the district court of the United States for the northern district of Florida, before you, in a cause entitled 'In the matter of the rule upon W. C. O'Neal to show cause why he should not be punished for contempt as to the matters and things set forth in the affidavit of Adolph Greenhut,' wherein the order of the said district court, entered in said cause on the 9th day of December, A. D. 1902, was against the said W. C. O'Neal, as by the inspection of the transcript of the record of the said district court, which was brought into the Supreme Court of the United States by virtue of a writ of error sued out by W. C. O'Neal, whereon the United States was made the party defendant in error, agreeably to the act of Congress in such case made and provided, fully and at large appears.

"And whereas, in the present term of October, in the year of our Lord one thousand nine hundred and two, the said cause came on to be heard before the said Supreme Court on the said transcript of record, and on a motion to dismiss, which was argued by counsel.

"On consideration whereof it is now here ordered and adjudged by this court that the writ of error in this cause be, and the same is hereby, dismissed for the want of jurisdiction. June 1, 1903.

"You, therefore, are hereby commanded that such proceedings be had in said cause as, according to right and justice and the laws of the United States, ought to be had, the said writ of error notwithstanding.

"Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, the fourth day of June, in the year of our Lord one thousand nine hundred and three.

"JAMES H. MCKENNEY,

"Clerk of the Supreme Court of the United States.

"(Endorsements: Supreme Court of the United States. No. 534, October term, 1902. W. C. O'Neal vs. The United States. Mandate filed June 11, 1903. F. W. Marsh, clerk.)"

And thereafter, to wit, on the 12th day of June, A. D. 1903, there issued out of the clerk's office of the said court a warrant of sentence of the said defendant, directed to the marshal of the said district, which was thereupon delivered to him and was by him executed and returned into the said clerk's office with his return indorsed thereon, which writ, together with the said return, is in the words and figures following, to wit:

"United States of America, district court of the United States, northern district of Florida.

"*The President of the United States to the marshal of the United States for the northern district of Florida, greeting:*

"Whereas at a session of the district court of the United States for the northern district of Florida, held at the city of Pensacola, in said district, on the tenth day of November, A. D. 1902, a rule to show cause why he should not be punished for contempt of the said court was duly made and entered by the said court against W. C. O'Neal for making an assault upon one Adolph Greenhut, who was then and there, at the time of said assault, an officer of said court, to wit, a trustee in bankruptcy in the matter of the petition of Scarritt Moreno to be adjudged a voluntary bankrupt, and then and there cutting, wounding, stabbing the said Adolph Greenhut, trustee as aforesaid, in such a manner as to prevent the said trustee from attending to and performing his duties as trustee as aforesaid, appointed as aforesaid under the order of said court, and that the said assault and attempt to murder was committed by the said W. C. O'Neal, as aforesaid, solely because and for the reason that the said Adolph Greenhut, as an officer of the United States district court in and for the northern district of Florida, had instituted a suit, set forth in an affidavit in said cause, and

to interfere with and prevent the said trustee from executing and performing his duties as such officer of said court, and that said W. C. O'Neal did, by the said murderous assault, interfere with the management of said trust by the said Adolph Greenhut, trustee as aforesaid of said court, and did, for a long period of time, by reason of the injuries inflicted upon the said trustee as aforesaid, prevent and deter the said trustee from performing the duties incumbent upon him as such officer, and did thereby interfere with the management by said trustee, as such officer, of the estate of the said bankrupt, which charges were in violation of the dignity and good order of the said court and a contempt thereof.

"And afterwards, to wit, on the 9th day of December, in the year of our Lord one thousand nine hundred and two, the said defendant, W. C. O'Neal, having been duly served with an order to show cause why he should not be punished for the alleged contempt aforesaid, which order was made returnable before said district court of the United States, was duly tried upon his demurrer, answer, and the evidence of the witnesses on the charge aforesaid, in said rule and affidavit preferred, and a finding of guilty was duly rendered by the said court against the said defendant, W. C. O'Neal.

"And afterwards, on the same day, our said court, by reason of the finding aforesaid of the said court, did duly sentence the said W. C. O'Neal to be imprisoned in the county jail of Escambia County, in the State of Florida, for and during the term and period of sixty days, and that he stand committed until the terms of said sentence be complied with, or until he be discharged by due process of law; the said jail being the place duly selected for the imprisonment of persons convicted of offenses against the laws of the United States in the courts thereof in said northern district of Florida.

"And the said W. C. O'Neal, defendant as aforesaid, having taken an appeal to the Supreme Court of the United States from the said finding and sentence aforesaid, and a supersedeas having been granted by the said district court pending the said appeal, and the said appeal having been dismissed by the Supreme Court of the United States, as evidenced by its mandate this day filed in the said district court of the United States for the northern district of Florida;

"Therefore, in compliance with the said sentence and of the mandate of the Supreme Court of the United States, you, the said marshal of the United States for the northern district of Florida, are hereby commanded to convey to the said county jail of Escambia County, in the State of Florida, at Pensacola, the body of the said W. C. O'Neal and deliver him to the keeper thereof.

"And you, the said keeper, in the name of the President of the United States of America, are hereby commanded to receive the body of the said W. C. O'Neal, the person aforesaid, into your custody, and him, the said W. C. O'Neal, safely keep in the said jail of Escambia County, in the State of Florida, at Pensacola, for the full term and period of sixty days or until he be discharged by due course of law.

"Herein fail not at your peril; and make due return of what you shall do in the premises and of this writ.

"Witness the honorable Charles Swayne, United States district judge for the northern district of Florida, and the seal of this court, at the city of Pensacola, in said district, this 12th day of June, A. D. 1903.

"A copy.

"[SEAL.]

F. W. MARSH, Clerk."

"In the district court of the United States, northern district of Florida. In re W. C. O'Neal, contempt of court.

"I have to report to the said court that upon receipt of the warrant of sentence, a copy of which is hereto annexed, I made diligent search, and have continued to this date to search diligently within the said northern district of Florida, for the said defendant, W. C. O'Neal, and have been unable to find him within the limits thereof. That I have also made diligent search for H. L. Covington and W. J. Hannah, the sureties on a certain supersedeas bond, filed in the said cause, for the purpose of demanding of them the surrender and production of the body of the said defendant, W. C. O'Neal, and have been unable to find them or either of them within the said northern district of Florida.

"That the said W. C. O'Neal, and anyone on his behalf, have not surrendered the body of the said W. C. O'Neal in execution of the judgment and sentence evidenced in the attached warrant of sentence, and which was appealed from by the said W. C. O'Neal, as evidenced by his writ of error to the Supreme Court of the United States, sued out from the district court aforesaid, and in the matter of which appeal

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and writ of error he made, executed, and caused to be filed of record a certain supersedeas bond, in which the said H. L. Covington and W. J. Hannah were sureties, conditioned that he, the said W. C. O'Neal, should surrender himself in execution of said judgment and sentence appealed from as said court may direct, and the said Supreme Court having by its mandate directed that the said district court proceed according to law, the said writ of error notwithstanding, and the said conditions having thereupon become operative, as appears from inspection of the record in said cause, the original writ of warrant of sentence is hereby retained for further proceedings and execution in the premises.

"Dated this June 15th, A. D. 1903.

"T. F. MCGOURIN,
"U. S. Marshal, Northern District of Florida.
"By H. WOLF,
"Chief Office Deputy.

"(Endorsed: In re W. C. O'Neal, contempt of court. Special return & report of U. S. marshal. Filed June 15th, 1903. F. W. Marsh, clerk.)

"And afterwards, to wit, on the 24th day of June, A. D. 1903, the following return was made by the marshal on the foregoing writ:

"Marshal's return.

"Received the within warrant of sentence at Pensacola, Fla., on the 12th day of June, A. D. 1903, and executed the same by taking the body of W. C. O'Neal into my custody and delivering the same to the keeper of the Escambia County Jail at Pensacola, Fla., on the 24th day of June, A. D. 1903, together with a certified copy of the within warrant of sentence.

"T. F. MCGOURIN,
"U. S. Marshal.
"By H. WOLF,
"Chief Office Deputy.

"Entered and filed June 24, 1903.

"F. W. MARSH, Clerk."

UNITED STATES OF AMERICA, Northern District of Florida:

I, F. W. Marsh, clerk of the district court of the United States for the northern district of Florida, hereby certify that the foregoing pages, numbered from 1 to 11, both inclusive, and in printing, constitute a full, true, and complete transcript of the record and proceedings in said court in the matter of the rule upon W. C. O'Neal to show cause why he should not be punished for contempt of said court, as the same remains of record and on file in said court.

Witness my hand and the seal of said court at the city of Pensacola, in said district, this 28th day of January, A. D. 1905.

[SEAL.]

F. W. MARSH, Clerk.

Mr. Manager POWERS. Mr. President, I now offer in evidence a certified copy of all the evidence which was taken at the trial of what is known as the "O'Neal case," the first paper which I have offered being a certified transcript of the record of the court, in which all the papers appear. This certified record which I have in my hand is the evidence which was offered at the time of the hearing of the contempt case. It consists of all the evidence before the court, and it also includes the opinion which was rendered by the respondent in the O'Neal case, which is under the twelfth article presented to the court.

I assume that some portion of this evidence may not be very material to the issue, but I will ask that it be received in evidence and printed, as it is already certified to by the clerk of the court as being the evidence which was offered at the trial. I ask that it be received and printed without first being read. With the consent of the court, I ask that it be not read, but go in as evidence and be treated as such.

The PRESIDING OFFICER. Unless the reading is called for, that course will be taken.

The record referred to is as follows:

In the United States district court, northern district of Florida, at Pensacola. In re matter of contempt W. C. O'Neal.

This cause coming on for a hearing before Judge Charles Swayne on December 8, 1902, the following proceedings were had:

Counsel for prosecution offered in evidence the petition of Scarritt Moreno, heretofore filed in this court, seeking to obtain the benefit of the bankruptcy law, the document belonging to the files of this court.

Counsel for respondent makes no objection to its introduction.

Counsel for prosecution offers in evidence the order made by the clerk of the court referring the petition which has been offered in evidence to the referee.

Counsel for respondent makes no objection to its introduction.

Counsel for prosecution offers in evidence the order made by the referee adjudicating Scarritt Moreno a bankrupt.

Counsel for respondent makes no objection to its introduction.

Counsel for prosecution offers in evidence the affidavit made by A. Greenhut, as trustee.

COUNSEL FOR RESPONDENT. Are you going to offer his appointment as trustee?

COUNSEL FOR PROSECUTION. That is his oath as trustee.

COUNSEL FOR RESPONDENT. Was there an appointment?

COUNSEL FOR PROSECUTION. There was an order and approval of the bond.

COUNSEL FOR RESPONDENT. Are you going to offer those?

COUNSEL FOR PROSECUTION. Yes, sir.

COUNSEL FOR RESPONDENT. We have no objection to them.

COUNSEL FOR PROSECUTION. I now offer the bond of the trustee.

COUNSEL FOR RESPONDENT. We have no objection.

COUNSEL FOR PROSECUTION. I now offer the petition of the trustee, filed on October 9, 1902.

COUNSEL FOR RESPONDENT. We object to this petition, may it please the court. It is a petition of A. Greenhut, trustee, in which he asks that he be allowed to compensate Tunison & Loftin as attorneys for certain services rendered or to be rendered by them in the conduct of the business of this bankruptcy estate and representation of the trustee. I assume that the purpose of this offer is to get in evidence before the court the fact that Tunison & Loftin were engaged in the preparation of the bill of complaint, whereby it is sought to subject the property purchased by the said Scarritt Moreno, the said bankrupt, in the name of his wife, to the payment of debts provable in this bankruptcy proceeding, and for the intention of following this by a granting of the prayer of this petition so as to show that Mr. Greenhut at that time was acting under the order of the court, or if there was no direct order upon the ratification of the court of the action which he was doing. We object to that on the ground that there is no allegation in the petition which covers any such evidence. The allegation is that he was an officer of the court and that he was proceeding under the advice of his attorney to do this, and there is absolutely no intimation by the court that he was then acting under or by virtue of any order of the court. If this evidence be not for that purpose, then it is entirely irrelevant and immaterial. If it be for that purpose it is bolstering up a petition which does not contain an allegation of that kind.

COUNSEL FOR PROSECUTION. If your honor please, Mr. Blount has properly supposed that the offer of that paper in evidence is for the purpose of showing a ratification by the court of the trustee's action in bringing this bill. It was not necessary under the law for the trustee to secure ratification or such direction.

The COURT. This matter of evidence having been argued on demurrer, the court having seen and passed upon all this matter upon this ground, it is hardly worth while to take up the time of the court to argue it. I will give you an exception. The court is entirely familiar with the purposes for which they are offered.

COUNSEL FOR RESPONDENT. We note an exception.

COUNSEL FOR PROSECUTION. I now, if your honor please, offer in evidence the order made by the referee, in the absence of your honor, upon the petition that has just been offered.

COUNSEL FOR RESPONDENT. We object to the introduction of this paper in evidence upon the ground that if it be offered for the purpose of showing an order of the court under which the trustee was acting or a ratification of the action of the trustee in bringing this bill, it is founded upon no allegation in the petition, and that if it be not for this purpose it is immaterial and irrelevant to any issue made in this cause.

The COURT. The court admits the last two papers, because, in the opinion of the

court, they show that the trustee in this cause was acting at the time not only as an officer of the court, but that they also show that his action in regard to the bringing of the suit in question, of which the affidavit and the answer both speak, was ratified by those papers.

COUNSEL FOR RESPONDENT. We note an exception to the ruling of the court.

Thereupon the prosecutor called Adolph Greenhut, who, being duly sworn, testified as follows, to wit:

Direct examination by B. C. TUNISON, Esq.:

Q. What is your name?—A. Adolph Greenhut.

Q. Where do you reside, Mr. Greenhut?—A. Pensacola, Fla.

Q. What is your age?—A. I was 51 last August.

Q. How long, Mr. Greenhut, have you resided in Pensacola?—A. I came here in July, 1886.

Q. Before that time, Mr. Greenhut, where did you reside?—A. Greenville, Ala., from 1873 to 1886.

Q. What is your business?—A. I am a wholesale grocery merchant.

Q. Where?—A. On Government street, in this city.

Q. Doing business in what name?—A. A. Greenhut & Co.

Q. Mr. Greenhut, were you or are you the trustee of the estate of Scarritt Moreno, bankrupt?—A. I am, sir.

Q. Do you know when you were appointed as such trustee, about when?—A. I think, as near as I can recollect, in September. I have forgot the date.

Q. Mr. Greenhut, look at that paper, and state, if you know, what it is.—A. I think it is a bill filed in the chancery court of this county.

Q. A bill filed by you as trustee?—A. Yes, sir.

COUNSEL FOR PROSECUTION. I offer in evidence, if your honor please, the bill of complaint in the cause pending in the circuit court of Escambia County, Fla., between Adolph Greenhut, trustee of the estate of Scarritt Moreno, bankrupt, complainant, v. Scarritt Moreno, Susie R. Moreno, his wife, Mansfield Moreno, the American National Bank, of Pensacola, S. J. Forshee, Alex McGowin, jr., C. M. Covington, and the Citizens' National Bank, of Pensacola, filed in the office of the clerk of Escambia County circuit court on October 18, 1902, and I ask leave to withdraw the original bill and place in lieu thereof an exemplified copy thereof.

COUNSEL FOR RESPONDENT. We have no objection, may it please the court, to the filing of a certified copy in the place of this, and really have no objection to the bill, except that there is no issue made upon those facts, and that the purpose of the bill is set forth very distinctly in the affidavit, and it would expedite the cause not to encumber the record with long papers of this kind. We state that we admit in part and presume in part that it was true, so that it made no issue whatever upon it.

The Court. It will be admitted.

Q. Mr. Greenhut, do you know what day of the week the bill that has just been offered in evidence was filed and the suit commenced?—A. I think it was on the 18th day of October, 1902.

Q. Do you know what day of the week that was?—A. On Saturday.

Q. Do you know what time of day on Saturday that bill was filed?—A. I do not know the exact hour; no, sir; I could not tell that.

Q. Mr. Greenhut, by whose advice was that bill which has been offered in evidence filed?—A. My attorney, sir.

Q. Who was your attorney?—A. B. C. Tunison.

Q. Mr. Tunison did you say? Do you know W. C. O'Neal?—A. I do, sir.

Q. How long have you known him?—A. Possibly a month or two before October two years.

Q. Before the past October two years?—A. Yes, sir.

Q. Do you know whether or not he occupies or at the time of the filing of this bill whether he did occupy any position with the American National Bank?—A. He was president of the American National Bank.

Q. Was he president at that time?—A. I think so.

Q. Did you see Mr. O'Neal on the Monday following the commencement of this suit?—A. Yes, sir.

Q. At what time of day, Mr. Greenhut, did you see him?—A. A little after 9 o'clock in the morning.

Q. Where did you see him?—A. I think I seen him coming out of what we call the "bucket shop" and coming down the street.

Q. Coming out of—A. I think he was just coming out of there, and I seen him coming down the street from that direction.

Q. The bucket shop you say?—A. The stock exchange.

Q. That is on what street?—A. Government street.

- Q. West of your store, is it not?—A. Yes, sir.
- Q. Where were you at that time?—A. At my store, standing in front of the store.
- Q. With whom?—A. A. Lischkoff.
- Q. Did you only see Mr. O'Neal there at the bucket shop or the exchange?—A. There may have been some other people on the street, but I do not recollect them.
- Q. Did you see him after seeing him at the bucket shop?—A. He came down the street. I first saw him coming out of there and he came down the street toward my office.
- Q. Mr. Greenhut, at that time did you have a coat and vest on?—A. I had no coat on.
- Q. You had on a vest?—A. Yes, sir.
- Q. You were in your shirt sleeves, were you?—A. Yes, sir.
- Q. Did Mr. O'Neal come down the street toward your store?—A. He came toward me.
- Q. And where were you at that time?—A. I was standing right in front of my store next to A. Lischkoff. For instance, this is the post; he was standing outside and I was standing right next to him.
- Q. Right in your doorway?—A. Not in the doorway. We were just sideways.
- Q. Did Mr. O'Neal speak to you at that time?—A. He addressed me.
- Q. What did he do?—A. Said he would like to speak to me when I was through.
- Q. What reply did you make to him?—A. I told him I was through.
- Q. What was then done?—A. Mr. Lischkoff passed off and I went in the office, facing the desk with my back toward the west, and he standing right in front of me.
- Q. How far from the office door did you go?—A. I do not know; I expect it was four or five feet, possibly six; not exceeding six feet.
- Q. You were standing there next to the desk, you say?—A. Near the desk. There was a desk, then a safe, and I was standing right along there, right in front of the desk.
- Q. With your back toward the desk and the safe that was on the westerly side of your office?—A. Yes, sir.
- Q. What did Mr. O'Neal do?—A. Standing right in front of me, and he says, "I see you brought the American National Bank into that suit."
- Q. What suit?—A. The Morenos. That is the only suit that was mentioned. I says, "Yes; the Citizens' National Bank is in there, too." He says, "Well, I do not care anything about that." He says, "Why did you do that?" I says, "My counsel says it was necessary." He says, "Well, don't you know I offered you that property?" I says, "Yes." He says, "Well, don't you know these parties paid for it?" and I says, "I do not know."
- Q. What then, Mr. Greenhut?—A. He says, "You are no gentleman." I says, "Mr. O'Neal, I am as much of a gentleman as you are."
- Q. Just state after that what took place?—A. He hesitated there a little, and I thought he had started, and he says, "Well, we will settle that," and he was then passing out, starting out of the west side. I was on the other side, and just as he got about to the door he wheeled with a knife. He had a knife in his hands or his pocket, and just wheeled around and lunged at me. I was perfectly horror-struck, and tried to grab it, and he grabbed around me and stabbed me twice in here and in there and in there, and he dragged me out toward the street. He had perfect control of me. I was so horror-struck from loss of blood and from the idea of being cut up.
- Q. Will you just show the court that first cut?
- Witness thereupon exhibits to the court the first cut.
- Q. Where was the next cut, Mr. Greenhut?—A. I could not possibly say, because I was at such a loss—
- Q. What other cut did he inflict upon you?—A. A cut right in my arm, two in my body, and in my right hand.
- Q. What part of the body was the two cuts?—A. Right here.
- Q. Mr. Greenhut, what is that [exhibiting bundle to the witness]?—A. That is the vest I had on.
- Q. What is that, Mr. Greenhut [exhibiting to the witness another bundle]?—A. That is a cut.
- Q. And what is that color?—A. That is blood.
- Q. This is what [exhibiting to witness another bundle]?—A. That is the shirt I had on.
- Q. And what is this?—A. That is a cut.
- Q. Mr. Greenhut, where did you keep the books, papers, etc., relative to your trusteeship?—A. They were in a separate safe in my office.
- Q. At the same office where Mr. O'Neal visited?—A. Yes, sir.

Q. Mr. Greenhut, did the conduct of Mr. O'Neal in any way interfere with your management of the Moreno estate?—A. I certainly think it did, because I have not been able to do anything for several weeks afterwards, for I was in bed.

Q. Was there any work that you were—anything to be done by you as trustee that you were advised shortly before the cutting it was necessary for you to do pretty soon?—A. Settle matters up; wanted to make a report to the referee what we had done. We learned that there was some thousands of feet of lumber at Bagdad at Simpson & Co., which we thought as trustee I was entitled to, and contemplated taking, and wanted to proceed to seeing about the household fixtures and furniture of Scarritt Moreno. We discovered some land that Scarritt Moreno had bought that was under mortgage and wanted to sell some rights and interest that he might have in the Moreno mill down here.

Q. Have you been able since the attack on you made by Mr. O'Neal to attend to any of this business?—A. I have not attended to no business at all for two or three weeks, and since that time I am so unnerved I do not do anything except a little clerical work.

Q. Did you have any medical attendance?—A. Yes, sir.

Q. Or attention?—A. Yes, sir.

Q. From whom?—A. Dr. F. G. Renshaw.

Cross-examination by W. A. BLOUNT, Esq.:

We move to strike out from this testimony that portion which relates to the business of the trust that Mr. Greenhut was then carrying on, and as to any prevention of him from carrying on that business except so far as the particular bill filed against Scarritt Moreno and the American National Bank is concerned, upon the ground that there is no showing in the evidence that any act or obstruction of the administration of justice done by Mr. O'Neal was done in the presence of the court or so near thereto as to obstruct the administration of justice, and upon the further ground that the work which Mr. Greenhut testifies to is not testified to have been done under any mandate, order, rule, process, or command of this court, and therefore that Mr. O'Neal was not in disobedience of or obstructing any such order, rule, command, mandate, or process of the court.

COUNSEL FOR PROSECUTION. That is the same question that you have passed upon in the demurrer and was overruled.

The COURT. It is a broader question, but the court thinks that it is all admissible under the allegations of the affidavit and under the several features which is in the answer. I will give you an exception.

Counsel for respondent noted exception to the ruling of the court.

Q. You say that this matter occurred about 9 o'clock in the morning of October 20?—A. After 9 o'clock.

Q. Your office, your store door, is on the East Government street, is it not?—A. Yes, sir.

Q. On the north side?—A. Yes, sir.

Q. Is that or not in the line of the path that would be pursued by Mr. O'Neal in coming from the stock exchange to this office?—A. Very often he comes that way.

Q. So that that morning he was pursuing a frequent route used by him?—A. I suppose so. Sometimes I have seen him come that way and seen him go another.

Q. Now, your bill had been filed, I believe you stated, on October 18?—A. Yes, sir; I think so.

Q. And that was on October 20?—A. Yes, sir.

Q. When Mr. O'Neal spoke to you, at the door of your store, did he say anything further than that he wanted to see you when you were at leisure?—A. That is what he said.

Q. And you told him, in effect, that you were at leisure at that time?—A. Yes, sir.

Q. And you went into your office?—A. Yes, sir.

Q. During that conversation in your office was there any other subject of conversation except the fact that you had brought this bill against Scarritt Moreno and others involving the American National Bank?—A. Nothing except what I stated.

Q. Was there anything said to you about an indebtedness which the American National Bank claimed against you because of your indorsement of a note of Scarritt Moreno—an acceptance of Moreno's?—A. Not a single word.

Q. Now, then, as I recollect, according to your testimony the last words that passed between you and Mr. O'Neal were that you said that Mr. O'Neal said you were no gentlemen, and you said "I am as much a gentleman as you?"—A. Yes, sir.

Q. And then he said "We will settle that," and that followed immediately after the words that I have mentioned?—A. He hesitated possibly a second or two.

- Q. So that there were no words or other conversation intervening between what you and he said?—A. None that I recollect.
- Q. And then, after that, he started to go out of the door?—A. He did not go out.
- Q. He started to go out, I said.—A. Yes, sir.
- Q. And you followed on behind him?—A. No, sir; I didn't.
- Q. What did you do?—A. I crossed over to the other side.
- Q. What is it you did, Mr. Greenhut?—A. He started toward the right-hand side of the door, and I started out slowly on the other side. I didn't even go out at all.
- Q. The right-hand side of the door; in which direction were you going when you started to go out?—A. Toward the south.
- Q. In which direction was he going?—A. He was going toward the south also, and I crossed over slowly, going to the left of the door facing the street.
- Q. You and he were going both toward the same door. Do I understand that he was going to the right side of the door and you to the left side of the door?—A. Yes, sir.
- Q. Both going south?—A. Yes, sir.
- Q. Well how far had you proceeded when he turned upon you, as you said?—A. Only a few feet.
- Q. You had been back into the office, as I understand you to say, some 6 or 7 feet?—A. Yes, sir; about that—that is, from the door, not back in the office.
- Q. Did you not strike Mr. O'Neal?—A. No, sir.
- Q. At no time?—A. No, sir.
- Q. Did you or not offer to strike him?—A. No, sir.
- Q. You say, Mr. Greenhut, that at that time you had in view the doing of certain things for the trust?—A. Yes, sir.
- Q. Involving among some other things the sale of an interest in the Jordan & Brosnaham mill?—A. Yes, sir.
- Q. Was that completed before you were hurt?—A. I do not think it was.
- Q. It was completed afterwards, was it not?—A. I think I done some work—
- Q. Was it completed by you or by your counsel?—A. By my counsel.
- Q. So that you were not obstructed in that particular?—A. I had partly agreed on the prices that he could get for it, and I think it was afterwards consummated.
- Q. Was there anything that was obstructed, to your knowledge, by the fact that you were injured by this affray?—A. I was not able to do anything until I got up, and in the meantime there had been a sale of an interest in the Jordan & Brosnaham mill property that I could not attend to, and a sale of some timber had to be arranged for, and I could not consult with my attorneys about the suit.
- Q. Has not, as a matter of fact, during the time that you say you have been unable to do anything all of the steps that you speak of been done with reference to endeavoring to get at the furniture and fixtures of Mr. Moreno?—A. Not during my sickness that I know of, but possibly since. I do not think it was done during the time I was laid up.
- Q. Have you done anything yourself about it; has it not all been done by your counsel?—A. That was done by my counsel, but with my consent; we have consulted together.
- Q. It was simply a question of consultation?—A. I do not think it was necessary for me to do it; I trust him in all things.
- Q. Mr. Greenhut, do you know whether Mr. O'Neal knew at the time that this occurrence took place that you had in your safe in your store any of the books and papers appertaining to your office as trustee?—A. I could not tell what he knew.
- Q. You do not know?—A. No.
- Q. Do you know whether Mr. O'Neal knew at the time that you had any authority or ratification from this court or its referee of his filing this bill against Scarritt Moreno?—A. That he knew of that?
- Q. Yes, sir.—A. I could not swear that he knew it.
- Q. Did you not tell him at that time that you were acting under any order of the court or any authority of the court?—A. I told him that morning.
- Q. Yes, sir.—A. I told him that I was acting under the advice of counsel.
- Q. So you did not tell him that you had any authority from the court to do it?—A. I did not think it was necessary to do that.

Redirect examination by B. C. TUNISON, Esq.:

- Q. Mr. Greenhut, did you see Mr. O'Neal at any time between the time that the suit was commenced in the circuit court and the time when the assault was made?—A. What suit do you refer to?
- Q. The suit that was commenced in the circuit court against Scarritt Moreno and others.—A. No, sir; not until that morning.

Q. That was the first time you saw him between the time of the filing of that suit?—A. Yes, sir.

Q. Or after the filing of the suit?—A. Yes, sir.

Q. That is all.

Thereupon F. G. RENSRAW was called upon behalf of the prosecution, and being duly sworn, testified as follows:

Direct examination by B. C. TUNISON, Esq.:

Q. Your name is Dr. Frank G. Renshaw?—A. Yes, sir.

Q. You are a practicing physician in Pensacola?—A. Yes, sir.

Q. Doctor, were you called in professionally to attend to Mr. Greenhut on or about the 20th day of October last?—A. I was.

Q. Where was Mr. Greenhut at that time?—A. I first saw him at Cushman's drug store.

Q. In Cushman's drug store?—A. Yes, sir.

Q. Cushman's drug store adjoins Mr. Greenhut's store immediately on the west side, does it not?—A. It does.

Q. For what were you called upon to attend him?—A. For cuts, injuries.

Q. State, Doctor, the character of those cuts and injuries.—A. They were incised wounds; wounds made with a sharp instrument—a knife.

Q. Where were they located?—A. One was over the left cheek.

Q. Extending from what point to what point?—A. From behind the ear to the inner corner of the mouth.

Q. Did that cut his ear also?—A. Yes, sir.

Q. Did it cut the lower lobe of his ear off?—A. Partially.

Q. You sewed up that ear?—A. I did.

Q. And sewed up the wound on the left cheek?—A. I did.

Q. What other wounds or cuts, Doctor, did you see?—A. He had a triangular-shaped cut or stab—combination stab and incised wound—above the left elbow joint; then the lower margin ribs on the left side, a very superficial wound incised about 2 inches possibly in length.

Q. What else?—A. There was another injury between the thumb and index finger—the web of the hand.

Q. Which hand?—A. The right hand, I think.

Q. Was there any other?—A. I do not remember of any other.

Q. Was there not one on the left side of the back that you have not described?—A. I mentioned the one under the lower ribs.

Q. Well, what portion of the body?—A. I think it was on the left side.

By Mr. BLOUNT:

Q. That was the superficial one you spoke of?—A. Yes, sir.

By Mr. TUNISON:

Q. Not on the back?—A. I can not say positively. I have mentioned four.

Q. What portion of the left side was the wound?—A. Well, on the left.

Q. Well, on what portion of the side?—A. About the lower ribs.

Q. Right directly on the side, or was it or not toward the back?—A. It was on the side posteriorly slightly, I believe.

No questions by respondent.

Thereupon the prosecution called F. O. BRENT, who, being duly sworn, testified as follows:

Direct examination by B. C. TUNISON, Esq.:

Q. Mr. Brent, where do you reside?—A. Pensacola.

Q. Are you acquainted with Mr. A. Greenhut?—A. I am.

Q. Are you acquainted with his reputation for peace and quiet?

(Counsel for respondent objects to question upon the ground that his character for peace and quiet can not be put in evidence until it is attacked.)

COUNSEL FOR PROSECUTION. If your honor please, as we understand it the answer in this case charges acts on the part of the prosecutor that in our judgment do attack his character for peace and quiet.

THE COURT. I understand that to be the character of the defendant's defense is that he was attacked by a stronger and more powerful man, and one of his excuses set up in his defense. The question is whether it will be offered at this time or later.

COUNSEL FOR RESPONDENT. It does not make any difference now whether it is to be offered now or later. I had just as leave take my exception now. We make

another objection to this testimony, may it please the court, upon the ground that there is no issue made of the general character of Mr. Greenhut for peace and quiet, and that character of any kind can not be offered in evidence unless it has been attacked or impeached by the opposing side. We understand that your honor overrules it and we save the exception.

COUNSEL FOR PROSECUTION. For the purpose of saving time Mr. Blount consents, subject, of course, to this exception to your honor's ruling, as in this witness, that the other character witnesses who have been summoned here will testify that they each know the reputation of Mr. Greenhut for peace and quietude, and that they would testify to the same and will testify that his reputation is that of a peaceable and quiet citizen.

Those witnesses are: F. C. Brent, W. J. Forbes, Rev. P. H. Whaley, William E. Anderson, L. H. Green, John W. Frater, Jacob Kryger, Boykin Jones, and William Fisher.

Prosecution rests.

Thereupon the respondent, W. C. O'Neal, was duly sworn, and testified as follows:

Direct examination by W. A. BLOUNT, Esq.:

Q. You are the W. C. O'Neal against whom this proceeding has been taken?—
A. Yes, sir.

Q. Mr. O'Neal, will you please state to the court the circumstances attending—not leading up to at that time—but the circumstances attending the affray between you and Mr. A. Greenhut? Where had you been; [where] were you coming from that morning?—A. I was coming from home.

Q. Where did you stop on East Government street?—A. I stopped there in front of Mr. Greenhut's place of business.

Q. He spoke of your stopping in front of the bucket shop. What place was that?—
A. I do not remember whether I stopped there or not. I might have done it—at the Pensacola Stock Exchange.

Q. For what purpose did you stop?—A. I stopped there to see the quotations on cotton.

Q. Now, then, you proceeded until you came to Mr. Greenhut's, did you?—A. Yes, sir.

Q. Then state what occurred—exactly what occurred thereafter, anything and everything from the moment that you addressed him until the time that you were finally taken apart.—A. I passed down the street, and I saw Mr. Greenhut and Mr. Lischkonff talking. I spoke to both. I says, "Good morning," and I says, "Mr. Greenhut, I would like to see you when you are at leisure," and Mr. Greenhut said, "I am at leisure now," and I says to Mr. Greenhut, "Don't let me interrupt you; any time during or started to turn to go back up the street toward his place of business, and Mr. Greenhut says, "Come in." He stepped back into the back part of his office there and I went on (in), and I asked him why he had sued us. He says, "Well, I do not know anything about it; you will have to see my lawyer about it." I says, "Mr. Greenhut, I think you do know something about it. I think you were a director of the American National Bank when this paper that I am sued on was sold and transferred," and I says, "We did not sue you when we had to sue you without seeing you about it or without talking to you about it. We did everything we could to avoid the suit; we did everything we could to get a settlement of that before we sued you," and I talked on with him regarding this matter in that way, and I reminded him of the fact that Mr. Eagan had tried to get a settlement with him before we sued him on the \$1,500 debt, and I found out after talking with him it seemed it was impossible to get a settlement with him that way, and I says to him—I finally told him that I thought that if he had been a gentleman he would not have done it, and he said, "I am as much a gentleman as you are"—being a director in the bank and refusing to pay a paper and letting us sue him on it, and he says he was as much of a gentleman as I am. I says, "Mr. Greenhut, I won't dispute that with you on that point. I do not want any trouble with you," and when I said that to him, why, he made a motion that way, like he would strike me with his fist, and says, "If you fool with me I will do you up here," and I says, "No, I reckon not," and I stood there for a moment hesitating, and I turned to go out. He come on following me and he said something to me. I do not know what he said, and when he said that I told him that he lied to me about the Moreno paper, and as I told him that I turned around, and Mr. Greenhut he struck me here, and I struck him with my left fist, and then I shoved him off, and when I shoved him back he kind of stumbled back like—he looked to me like he almost fell down; then he came forward at me and I pulled out my knife and cut him, and we fought on out on the street there, and I made several lunges for him

and he hit me several licks with his fist, and finally he caught hold of my arm here with his right hand, and after he caught my arms I reached around and caught hold of his other arm out in the streets, and then I holloed to old man Hyer to come there and get him—

Q. Which old man Hyer was that?—A. Mr. Hyer, of the firm of J. E. Stillman & Co.

Q. Copartner with J. E. Stillman & Co.?—A. Yes, sir.

Q. Now, Mr. O'Neal, during this conversation in the back of the office you say that you talked to him about having brought this suit and about his conduct in not paying the Moreno acceptance?—A. Yes, sir.

Q. State to the court what you mean by the Moreno acceptance.—A. The Moreno acceptance is a \$1,500 acceptance which was accepted by Baars, Dunwoody & Co., and indorsed by Scarritt Moreno and A. Greenhut.

Q. Had that been due for any length of time?—A. Yes, sir; it had been past due several months.

Q. Had you requested Mr. Greenhut to pay it?—A. Yes, sir.

Q. Did he pay it?—A. No, sir.

Q. What course had you taken with reference to procuring payment from him?—

A. We brought suit against him.

Q. Was that suit then pending?—A. Yes, sir.

Q. Is it still pending?—A. Yes, sir.

Q. And as I understand, the subject-matter of your conversation in the back part of the office was relating to both these suits—this suit which he had brought against the bank in connection with the subjection of Scarritt Moreno's property and also the suit the bank had brought against him to recover on this \$1,500 acceptance?—A. Yes, sir; we talked about both suits.

The COURT. When was the suit against Mr. Greenhut commenced?

COUNSEL FOR RESPONDENT. A month or two before.

COUNSEL FOR PROSECUTION. A plea was filed on the rule day in October; the 6th day of October.

Q. Then, as I understand, after discussing these matters you told him that he would not have done as he had done with reference to them if he had been a gentleman?—A. Yes, sir; I told him that.

Q. And he answered that he was as much of a gentleman as you are?—A. Yes, sir.

Q. And then you hesitated a moment and turned off?—A. Yes, sir.

Q. Did anything occur after that before you saw him in the attitude that you say of striking at you—I mean before you said to him that he had lied to you about the Moreno acceptance?—A. He said something to me just as I turned. I do not remember what he said; he spoke to me just as I turned. When he spoke he was right near to me, and I turned then—

Q. He spoke to you and you turned?—A. Yes, sir.

Q. And said to him as you turned that he had lied about the Moreno acceptance?—

A. Yes, sir.

Q. And then he struck you and you struck him back?—A. Yes, sir.

Q. And he advanced to strike you again?—A. Yes, sir.

Q. And you drew your knife and used it; is that what I understand?—A. Yes, sir.

Q. Where did he strike you; what part of the person?—A. He struck me on the left side.

Q. Was there any indication of that stroke after this occurrence?—A. Yes, sir.

Q. Did you subject it to any treatment by any physician or ask any physician about it?—A. Yes, sir.

Q. Who?—A. Doctor Hannah.

Q. Have you the knife, Mr. O'Neal, that you used?—A. Yes, sir.

Q. Show it to the court, please. [Knife here exhibited to the court.]

Q. How long had you had that knife at that time?—A. Something like a year, I think.

Q. You had it in your pocket?—A. Yes, sir.

Q. Do you carry it in your pocket?—A. Yes, sir.

Q. At what time did you open that knife?—A. I opened the knife when I shoved him back.

Q. You shoved him back and then opened the knife?—A. Yes, sir.

Q. At the time that this occurred, did you have any knowledge as to where Mr. Greenhut kept the books and papers relating to his trust matter?—A. I did not.

Q. Did you have any knowledge of any order of the court, or any order of the court or its referee, either authorizing or ratifying the bringing of this suit by Mr. Greenhut?—A. I did not.

Q. Did you or not have in contemplation any effect that your action at that time

would have upon Mr. Greenhut's execution of the trust which he had in hand?—
A. I did not.

Q. It is alleged here that your intention was to impede and obstruct the execution of his trust. Did you or not have any such intention?—A. I did not.

Q. Had you considered in anywise the effect of your action upon his trust?—
A. No; I had not thought of it.

Q. Did you consider it during this affray that you had?—A. No, sir.

Q. Did you know whether Mr. Greenhut had known prior to the bringing of his suit to subject this mortgaged property and attacking the mortgage of the American National Bank as to whether that transaction was or was not a bona fide transaction?—A. He knew that it was.

Q. He knew that it was?—A. Yes, sir.

Q. What position was he in in connection with the bank at the time of that transaction?—A. He was one of the directors.

Q. Do you know whether he knew that that mortgage had been transferred to Foshee, McGowan & Covington, and that the bank had no longer any interest in it?—A. I offered him the mortgage for \$10,000 before I sold it to the other people.

Q. That is you offered to sell him the same mortgage?—A. Yes, sir.

Q. And then you afterwards sold it to Foshee, McGowan & Company?—A. Yes, sir.

Q. Now, then, do you know of your own knowledge whether he knew of the sale to these three gentlemen and the payment of the consideration by them?—A. I told him that I had traded with them.

Q. You do not know except in that way?—A. No, sir; I do not know whether he saw the papers or not after they were transferred.

Cross-examination by B. C. TUNISON, Esq.:

Q. You say, Mr. O'Neal, that Mr. Greenhut knew that all your transactions in relation to that mortgage was bona fide?—A. Yes, sir.

Q. How did he know it?—A. He passed on it; was in the bank and discussed it.

Q. Passed upon what?—A. The paper that was secured by that mortgage.

Q. Did he pass upon the mortgage?—A. Yes, sir.

Q. When?—A. About the time we took it, about a year before that.

Q. You say that he passed upon it; what do you mean when you say he passed upon it?—A. I mean that he was one of the finance committee and the finance committee examined all of the bank loans and discounts.

Q. Do you know that as a member of that finance committee he examined that identical loan?—A. I know that he handled the Bears, Dunwoody & Co. paper, and the mortgage was there in the bank.

Q. But you do not know whether or not he ever examined that mortgage, do you?—
A. The mortgage, examined the mortgage?

Q. Yes, sir.—A. I do not know that he ever read the mortgage.

Q. Then you do not know whether he knew that the mortgage was bona fide or not, do you?—A. It was there and we discussed the mortgage and had Mr. Eagan's opinion as to whether or not it was bona fide.

Q. What did you discuss about that mortgage with Mr. Greenhut?—A. We discussed as to whether the property, as mortgage covered, was worth the money or not.

Q. Worth what money?—A. The \$13,000; and we discussed as to whether or not Mrs. Moreno could make the American National Bank—whether the mortgage for \$13,000 transferred to us—as to whether or not she could make the mortgage under the laws of the State of Florida.

Q. You say that you discussed all of those matters with Mr. Greenhut?—A. I informed the finance committee that Mr. Eagan said that that could be done.

Q. Was Mr. Greenhut present at the time that you so informed the finance committee?—A. Yes, sir.

Q. You are sure of that?—A. Yes, sir.

Q. When was that?—A. About the time we took the mortgage; it has been something like a year and a half ago.

Q. That is all the knowledge that Mr. Greenhut had in relation to that mortgage, was it?—A. All the knowledge that he had of the mortgage?

Q. Yes, sir.—A. I do not know. I think he understood something about what property it covered, but I do not know if he ever examined the property itself.

Q. You say that you consulted with him about the value of the property covered by the mortgage?—A. I know that Mr. McDavid was the man who examined the property. We discussed it—that is, the finance committee.

Q. At a finance committee meeting at which Mr. Greenhut was present?—A. Yes, sir.

Q. And you found the property to be worth how much?—A. We sold the mortgage for \$10,000.

Q. What value did the finance committee put upon that property?—A. Mr. McDavid said, when he took the mortgage, that it might be worth \$13,000.

Q. Was that the verdict of the finance committee that it was worth \$13,000?—A. The finance committee passed the loan on that statement.

Q. Of how much money?—A. The loan was to secure an acceptance of Baars, Dunwody & Co., indorsed by Moreno, and the mortgage was given to better secure that paper.

Q. You say that you disposed of that \$13,000 mortgage?—A. Yes, sir.

Q. For how much money?—A. \$10,000.

Q. To whom?—A. To Foshee, McGowan & Covington.

Q. The mortgage was for \$13,000, was it?—A. Yes, sir.

Q. And you disposed of it to Foshee, McGowan & Covington?—A. Yes, sir.

Q. Do they occupy any position with your bank?—A. Yes, sir.

Q. What position?—A. Director.

Q. One of them is vice-president of the bank, is he not?—A. Yes, sir.

Q. Mr. O'Neal, you have stated that Mr. Greenhut was an indorser upon a \$1,500 piece of paper held by you which he refused to pay, did you not?—A. Yes, sir.

Q. And the maker of that paper and the other indorser had gone into bankruptcy?—A. Yes, sir.

Q. How much other paper did your bank hold at the time of the failure of Messrs. Baars, Dunwody & Co., upon which Mr. Greenhut was an indorser?—A. On account of the failure of Baars, Dunwody & Co.?

Q. Yes, sir.—A. About \$15,000; I am not sure as to the amount, but think it was about that.

Q. Mr. Greenhut was only liable on that paper as indorser, was he not?—A. Yes, sir; I think so.

Q. He paid all the paper upon which he was indorser except the \$1,500, did he not?—A. I think we have some of his indorsement now.

Q. He protected his indorsement in every instance, did he not?—A. Yes, sir.

Q. You say that you have some with his indorsement now?—A. I think so.

Q. Made by whom?—A. By the Stanton Mercantile Co.

Q. That is due?—A. No; it is not due.

Q. What is the amount of it?—A. I do not remember; it is a small bill.

Q. About how much?—A. I think it is—I guess Mr. Greenhut could inform you of the amount. I suppose \$100.

Q. But all the other paper, the other \$15,000 that Mr. Greenhut was liable on as indorser has been paid by him, has it not, except fifteen hundred dollars?—A. Yes, sir.

Q. Mr. Greenhut has been claiming to you right along that you were to protect him in that?—A. No, sir; never made any such claim.

Q. Didn't he ever say that you had agreed to protect him in the matter?—A. No, sir.

Q. What reason did he give you for not paying that indorsement?—A. He said that he thought we could make the money out of Baars, Dunwody & Co.'s assets.

Q. Why did he think the bank could; did he give you any reason?—A. He said he thought the property would bring enough to pay it all.

Q. How and for what reason does he look to that property?—A. For what reason? The mortgage recited that it was to secure any paper executed by or indorsed by Scarritt Moreno, and this paper was indorsed by Scarritt Moreno.

Q. The other paper, the balance of the \$15,000, was indorsed by Scarritt Moreno, too, was it not, that you held?—A. No, sir.

Q. Most of it was, was it not?—A. There was some of it accepted by Scarritt Moreno. I do not remember any part of it that was indorsed by him.

Q. All of that paper, the \$15,000, Scarritt Moreno was primarily liable for, was he not?—A. On practically all of the \$15,000? I do not think he was; he was liable on something like half of it.

Q. And then on that half of it—

(Counsel for respondent objects to line of testimony, as it appears that it is the purpose of the prosecution to get the information for other matters and not with reference to this suit, and there is no bearing as to how much Scarritt Moreno owed or anything else. The only important feature is, which Greenhut denied, that there was any controversy between them relating to the transaction.)

COUNSEL FOR PROSECUTION. The respondent in his answer here has set up that the prosecutor here refused to honor a certain indorsement made by him on a certain negotiable instrument; that it was held by the American National Bank. The respondent here in his answer sworn to says that Mr. Greenhut, the prosecutor in this case, interposed a plea in the suit at law brought by the bank that it was false

and untrue, and I want to show by this witness that that allegation of his answer is false.

COUNSEL FOR RESPONDENT. The allegation was that he believed it to be false, and still believes it, as I recollect it.

The COURT. I realized when the answer was read that several things in that answer were going to broaden the investigation considerably. I do not see how to avoid it. You may go on with it. It may or may not cut very much figure in this investigation, but like many other things that might be brought under that and some of the other allegations of the answer, the main bearing may be to enable the court to judge of the veracity of the one party or the other, or they may not be worth much for anything else. In that view they may be admissible. I can not say that the main issue here is as contended by the respondent's counsel, but inasmuch as the respondent has set these matters up as a matter of defense in his answer I do not see how we can avoid going into a reply to them.)

Q. Mr. O'Neal, with the other notes and negotiable papers held by your bank upon which Scarritt Moreno was primarily liable, and upon which Mr. Greenhut was the indorser, did Mr. Greenhut tell you to look to the real estate and look to this mortgage for the payment of them?—A. No, sir.

Q. He did not?—A. No, sir.

Q. It was only—he only wanted you to look to the real estate for the payment of this one specific piece of paper?—A. Yes, sir.

Q. Mr. O'Neal, you said in your affidavit that the plea interposed by Mr. Greenhut to the suit of the American National Bank against him was false, and you believed that he knew it to be false. What was that plea, do you know?—A. I think we went over the plea at the time, but—

Q. I am just asking you now if you know what that plea was?—A. I could not undertake to state the plea now. I remember going over the plea, though.

Q. Do you know what the nature of the plea was?—A. I could not tell you about the plea, but I remember going over the papers at the time.

Q. Where did you go over the pleas?—A. Mr. Blount and I went over the pleas together.

Q. Do you know who prepared the plea for Mr. Greenhut?—A. Blount & Blount.

Q. Mr. W. A. Blount?—A. I do not know. I think Blount & Blount prepared it.

Q. I will hand you the plea filed in that case, and which you say is false, and I will ask you to point out there what is false and what you believe was known by Mr. Greenhut to be false.—A. You want me to read the plea and state—

Q. Just point out what is false; you may read the plea if you desire.—A. That the defendant indorsed the acceptance sued on as a surety and that before the maturity of the said acceptance the plaintiff was the holder of certain collateral securities of large value, much exceeding the amount of the acceptance sued on, deposited with it by the corporation of Baars, Dunwody & Co. to secure all such indebtednesses or liabilities of any kind.

Q. Is that true or false?—A. That is incorrect.

Q. In what particular?—A. The securities that we held for Baars, Dunwody & Co. were deposited by Baars, Dunwody & Co. to secure loans made to Baars, Dunwody & Co.

Q. And made directly to Baars, Dunwody & Co.?—A. Yes, sir.

Q. Didn't the securities that you held there cover any paper that might come into your possession upon which Baars, Dunwody & Co. were primarily liable?—A. You mean securities that we held for Baars, Dunwody & Co.?

Q. Yes, sir.—A. I think not.

Q. You had a regular form of hypothecation note, did you not?—A. A regular form?

Q. Yes, sir.—A. Some we did and some we did not.

Q. Can you produce the hypothecation that the American National Bank had from Baars, Dunwody & Co. at the time?—A. No, sir.

Q. You can not?—A. No, sir.

Q. Will you state upon your oath that the hypothecation by Baars, Dunwody & Co. did not cover any indebtedness that might be due to the bank from Baars, Dunwody & Co.?—A. I will state under oath that the only collateral I know of was deposited by Baars were deposited to secure loans made direct to Baars, Dunwody & Co.

Q. When were those securities deposited?—A. At the time we made the loan.

Q. When were those loans made?—A. They were made previous to the failure of Baars, Dunwody & Co.

Q. How long before the failure of Baars, Dunwody & Co.?—A. How long before the failure of Baars, Dunwody & Co.?

Q. Yes, sir.—A. I do not remember; we loaned them money from time to time, along ever since we have been in the business.

Q. Were they not made within ten days before the failure of Baars, Dunwody & Co.?—A. I do not know.

Q. You say that these securities were not hypothecated with you on the regular form of hypothecation note?—A. I say they were hypothecated to secure loans that we made; some were hypothecated that way and some were not.

Q. What securities were hypothecated for the purpose of securing any indebtedness that you might hold against Baars, Dunwody & Co., to cover any indebtedness of Baars, Dunwody & Co. that might be due to you or to the American National Bank?—A. The hypothecations were specified to secure specified loans. There was a provision, I think, in some of the papers that would secure any indebtedness that might be due to the bank.

Q. What securities did you have hypothecated with you covering the last feature that you have referred to that would cover any indebtedness that might be due to the bank; what did you have at that time?—A. Any indebtedness due to the bank?

Q. Yes, sir.—A. What securities that we had?

Q. Yes, sir.—A. I do not remember.

Q. Did you at the time that that note became due have any of those securities in your possession?—A. Baars, Dunwody & Co.?

Q. Yes, sir.—A. We had some of Baars, Dunwody & Co. at that time.

Q. Did you have some securities generally to cover, to secure, any indebtedness that might be due to you?—A. No, sir. All the hypothecations were specified and for the amounts stated in the notes.

Q. And for only that?—A. There might have been, as I said before, and I think was a part of the paper clause in the notes saying that it would be good to us for any other amount of money that they might owe the bank.

Q. Then Baars, Dunwody & Co. owed you the amount of that note, did they?—A. Baars, Dunwody & Co.?

Q. Yes, sir.—A. Yes, sir.

Q. They accepted it?—A. Yes, sir.

Q. And you had securities covering just such indebtedness from Baars, Dunwody & Co. to your bank?—A. Do not think I did.

Q. A moment ago you did say you had some hypothecations that covered any indebtedness that might be due by Baars, Dunwody & Co.?—A. Yes, sir.

Q. Didn't that cover that \$1,500?—A. No, sir.

Q. Why not?—A. It was not sufficient amount to pay them.

Q. What was the amount of them?—A. The amount of the securities?

Q. Yes, sir.—A. The value of the collateral that we had from Baars, Dunwody & Co. worth about \$1,500.

Q. In this case, when you say that Mr. Greenhut has testified falsely, the defendant says that you were the holder of certain collateral securities of a large value, much exceeding the amount of the acceptance sued on. Is that so?—A. Which is that, the acceptance that was sued on, the \$1,500?

Q. Yes, sir. You held securities exceeding that?—A. Yes, sir.

Q. That was deposited with your bank by the corporation of Baars, Dunwody & Co. to secure all such indebtedness or liability of any kind as were or might become due to the plaintiff—that is, to the bank—from Baars, Dunwody & Co. That is true, is it not?—A. No, sir. Those collaterals were deposited to secure specific loans.

Q. You said that some were deposited to secure any indebtedness?—A. No, sir.

Q. You did not say so?—A. I said there was a clause in probably one of the notes that stated that any excess of the collateral was applicable to any other claim.

Q. What was the amount of any one note that contained that clause?—A. I do not remember as to those amounts.

Q. Well, was—did it amount to the sum of \$15,000?—A. Which, that note?

Q. Yes, sir.—A. My recollection was \$20,000.

Q. And the collateral in that note was worth more than \$1,500?—A. Yes, sir.

Q. Now, point out where the falsity of that plea is—A. To secure all such indebtedness as that acceptance.

Q. Just read the whole clause there. You said that you had \$20,000 of securities there that was hypothecated to you generally to cover any indebtedness due to you?—A. No, sir. I said that I thought that we had a note for \$20,000 with that clause in the note stating that any excess of this collateral should be applicable to any other claim.

Q. Then you held collateral that would cover and protect that note?—A. No; I did not.

Q. Would not that collateral that you held, that \$20,000, protect that?—A. No; was not enough to protect the \$20,000 and that.

Q. Mr. Greenhut in his plea, does he say there was? Does he allege there was sufficient to pay the amount for which this hypothecation was made and this?—

A. I think Mr. Greenhut says here in the plea that I was holder of certain collateral securities of large value, much exceeding the amount of the acceptance sued on deposited with it by the corporation of Baars, Dunwody & Co.

Q. He says, does he not, that the note was deposited with you to secure such debts as may accrue to you, and the property was worth—the securities were worth—a great deal more than the \$1,500? Is that not all, he says?—A. I do not think so.

Q. Mr. O'Neal, do you know Donald McLellan, jr.?—A. I know a young man named McLellan here in town; I do not remember his given name.

Q. He is in the court room [McLellan here called forward].—A. Yes; I recognize Mr. McLellan.

Q. Did you on the day of this affray between yourself and Mr. Greenhut have any conversation with Mr. McLellan?—A. Yes, sir.

Q. Where at?—A. In the bank.

Q. Mr. O'Neal, what time of day was that?—A. I think it was about—I do not know; I guess it must have been about 11 or 10 o'clock.

Q. It was very shortly after the cutting, was it not?—A. No; I think it was an hour or two afterwards.

Q. Now, Mr. O'Neal, did you not tell Mr. McLellan that you came down the street—down the side of the street on which Mr. Greenhut was; that Mr. Greenhut called you in; that in talking over a business matter he called you a liar; that you resented this by striking him?—A. No, sir; I did not. I do not think I told him that.

Q. You do not think you told him that. Did you not tell him that?—A. I did not tell him that.

Q. You did not?—A. No, sir.

Q. Did you tell him what the business matter was that you and Mr. Greenhut had been discussing?—A. I do not think I did. I think I told him it was some litigation between us.

Q. Didn't you tell him on that occasion that the trouble emanated from the suit that was commenced by Mr. Greenhut, as trustee, against Scarritt Moreno, the American National Bank, and others on the preceding Saturday?—A. I do not think so. I think I told him—I told him that the trouble was caused by the bankruptcy of Moreno, Baars, or something of that kind.

Q. Mr. O'Neal, have you ever been convicted of any crime?

(Counsel for respondent objects to the question.)

The Court. It has always been the practice here that any witness, including himself, can be asked questions in the criminal docket. In the prosecution of the criminal docket here—trial of criminal cases—it is a very common question, of which I can cite a dozen or more instances, whether or not the witness, does not matter what witness, any witness, has not been convicted of this or that or the other offense, not for the purpose of trying him for any other offense at all, but under the rules for the purpose of striking at his credibility. I will give you an exception.

(Counsel for respondent notes exception to ruling of the court.)

A. I was convicted once for shooting across the public road out in Covington County.

Q. At Andalusia?—A. Yes, sir.

Q. Mr. Stallings prosecuted you for that crime, did he not?—A. I do not think he did. I plead guilty to it.

Q. Were you indicted at that time for shooting across the public road?—A. Yes, sir.

Q. Were you not indicted at that time for shooting across the public road from the court-house in Andalusia to Bradley's barroom at Lewis Harrison?—A. I was not indicted for shooting Lewis Harrison.

Q. Shooting at him across the public road, at Lewis Harrison?—A. I was not indicted for shooting across the road at him.

Q. What other times have you been convicted, if any?—A. I was convicted in Covington County once for carrying concealed weapons—a pistol.

Q. When was that?—A. That was sometime while Stallings was solicitor.

Q. What else?—A. I do not remember to ever having been indicted for anything else.

Q. You say you were convicted for carrying concealed weapons in Covington County?—A. I think so, yes.

Q. Where else, Mr. O'Neal, have you been convicted?—A. I do not remember having been convicted of anything else.

Q. Don't you recollect having been convicted in Henry County?—A. No, sir.

Q. You were not convicted in Henry County for carrying concealed weapons?—A. I do not think I was.

Q. Didn't you plead guilty to a charge of carrying concealed weapons there about two years ago?—A. I don't think so; yes, I was.

Q. You were convicted there?—A. I plead guilty to it, yes.

Q. Well, what other times, Mr. O'Neal, have you been convicted?—A. I do not think of any others.

Q. Were you not charged in Henry County with having made a murderous assault upon one Simonton with a claw hammer?

Counsel for respondent objects to question.

Counsel for prosecution withdraws question.

Q. Mr. O'Neal, you were sued civilly for assault made by you upon one Mr. Simonton, were you not?

Counsel for respondent objects to question.

The COURT. If the question is to be followed up it will be admitted. The question by itself is not admissible.

COUNSEL FOR PROSECUTION. It will be followed up.

COUNSEL FOR RESPONDENT. Note exception to the ruling of the court.

Q. Was there or was not there a judgment recovered against you in Henry County for a murderous assault made by you upon one Simonton?

Counsel for respondent objects to question as showing result of the suit and proving a judgment that is a matter of record. Objection overruled and exception noted by counsel for respondent.

A. He sued me—Mr. Simonton sued me and recovered \$50.

Q. Sued you for what?—A. For damages about a fight we had. He and I had a fight.

Q. The allegation was that you had struck him with a claw hammer, was it not?—

A. Yes, sir.

Q. Do you know what became of Mr. Simonton after that?—A. Yes, sir.

Q. What?—A. He is in Pensacola now.

Q. He is?—A. Yes, sir.

Q. What time of day was it that you went to Mr. Greenhut's store on October 20?—

A. That is, the day of the difficulty?

Q. Yes, sir.—A. It was about 9 o'clock in the morning; maybe a little afterwards.

Q. You were—how long were you in his store?—A. I do not know. I guess I must have been there something like five minutes.

Q. What part of the store were you in?—A. We were in the back part of the office.

Q. How far from the front entrance?—A. I suppose we were 6 or 8 feet.

Q. Do you call that the back part of the office, 6 or 8 feet?—A. Yes, sir; I think it was.

Q. What is the size of the office?—A. I do not know how long the office is.

Q. About how long?—A. I suppose it is about 12 feet; maybe longer. It might be 14.

Q. On which side of the office was Mr. Greenhut?—A. He was on the left side; that is, the west side.

Q. Was he standing with his back against the desk?—A. I do not remember as to that.

Q. Where were you standing?—A. I was standing there at the corner of the palings and I think he was standing immediately in front of me.

Redirect examination by W. A. BLOUNT, Esq.:

Q. Do I understand you to say that Mr. Greenhut knew that Baars, Dunwody & Co. was indebted to the American National Bank?—A. Yes, sir.

Q. And he knew that this mortgage made by Scarritt Moreno was intended to cover any part of that indebtedness?—A. Only the indebtedness that Moreno was liable on.

Q. But the indebtedness of Baars, Dunwody & Co. upon which Scarritt Moreno was liable?—A. Yes, sir.

Q. And that he knew that Mr. Eagan had advised that the mortgage was a valid mortgage for that purpose?—A. Yes, sir.

Recross-examination by B. C. TUNISON, Esq.:

Q. When did you dispose of the property hypothecated to the American National Bank by Baars, Dunwody & Co.?—A. Some time in June, if my recollection is correct.

Q. Immediately after the assignment of Baars, Dunwody & Co., was it not?—A. No; I think it was—it must have been a week or two or three weeks after the assignment.

Q. How did you dispose of those securities, Mr. O'Neal?—A. The indorsers paid it.

Q. The indorsers on the original obligations paid it?—A. Yes, sir.

Q. And what did you do with the securities?—A. I surrendered the securities to the indorsers.

Q. Was Mr. Greenhut acting as a director of your bank at that time?—A. Yes, sir.

Q. When did he cease to act as a director of your bank?—A. He resigned about the time that we sued him.

Q. About July?—A. I think so.

Q. When did you sell to Foshee, McGowan & Covington the \$13,000 mortgage of Scarritt Moreno?—A. Some time in June.

Redirect examination by W. A. BLOUNT, Esq.:

Q. You had frequent discussions with Mr. Greenhut, you said, about this matter of indebtedness to the bank, of this \$1,500 acceptance?—A. Yes, sir.

Q. Had he, or not, shown any heat or anger upon these occasions?—A. Mr. Greenhut appeared to be a little touched up and angered at times, and at other times he seemed very pleasant.

Q. There had been, then, feelings between you on account of that acceptance?—A. Yes, sir.

Thereupon the respondents called one Dr. W. J. Hannah, who, being duly sworn, testified as follows:

Direct examination by W. A. BLOUNT, Esq.:

Q. You reside in the city of Pensacola?—A. Yes, sir.

Q. Have been residing here for some time?—A. Yes, sir.

Q. Do you know Mr. W. C. O'Neal?—A. I do.

Q. Do you remember the occasion of the affray between him and Mr. Greenhut?—A. Yes, sir.

Q. Did you, at any time after the affray, examine his person?—A. Mr. O'Neal?

Q. Yes, sir.—A. Yes, sir.

Q. How long afterwards?—A. I suppose a half hour or such a matter.

Q. Did you find any evidence of contusion or bruises upon his person?—A. I found some redness; yes, sir.

Q. Where?—A. On his side, sir.

Q. What side?—A. I do not know, but I rather think it was the left. I am not sure of that.

Q. What, in your opinion, was that occasioned by?—A. He said—

Counsel for prosecution objects to witness stating what was said.

Q. Do not state what he said.—A. He looked as though he might have been punched.

Q. That was a half hour afterwards, you say?—A. About that, sir. I do not know exactly.

Q. How did you examine—happen to examine him?—A. I went in his office by accident.

Q. And were requested by him to examine it?—A. Yes, sir.

Cross-examination by B. C. TUNISON, Esq.:

Q. You are connected with the American National Bank, are you not, as a director?—A. Yes, sir.

Q. Where was this injury?—A. It was on the side; I do not remember, but I think it was on the left side.

Q. And you say the only evidence of it was a redness?—A. And complaint; he said it was very sore.

Q. What did you prescribe for it?—A. Nothing.

Q. There was no laceration?—A. No, sir.

Q. You say it looked as if it might have been punched. Would you have thought it was a punch if he had not told you so?—A. It was circumscribed. He certainly could not have received a circumscribed red spot in any other way than by coming in contact with something.

Q. But not necessarily being punched, was it?—A. It was a circumscribed red place.

Q. If he had come in contact with the corner of that desk, would it not have been the same?—A. Possibly.

Q. Would there have been any difference?—A. I do not think a man could have told the difference.

Thereupon the respondents called one John McDavid, who, being duly sworn, testified as follows, to wit:

Direct examination by W. A. BLOUNT, Esq.:

Q. Did you have any connection with the American National Bank—A. I am a director, sir.

Q. Did you know of an acceptance, upon which Mr. Greenhut was indorser, made—and upon which Scarritt Moreno was indorser—made by Baars, Dunwody & Co. to the American National Bank?—A. Yes, sir.

Q. Did you ever hear any conversation between Mr. Greenhut and Mr. O'Neal with reference to the payment of that acceptance?—A. Yes, sir; I think it was some time in June. I am not positive as to the date of the transaction. I am one of the finance committee of the bank, and Mr. O'Neal called my attention to this piece of paper, then past due, and I suggested that he call Mr. Greenhut over and see what he proposed to do about it, and he came over into the bank while I was there, and Mr. O'Neal called his attention to this particular paper, which was drawn by Moreno on Baars, Dunwody & Co. and accepted by them and indorsed by Moreno and Greenhut, and he said it was his indorsement—that he would pay it. I expect to take care of all my papers.

Q. Do you know whether he paid it or not?—A. He has not paid it yet.

Q. Did you have any further conversation between him and Mr. O'Neal with reference to it?—A. No, sir; nothing further said. He was in the bank only a few minutes.

Thereupon the respondent recalled W. J. Hannah, who testified as follows:

Direct examination by W. A. BLOUNT, Esq.:

Q. You said that you were connected with the American National Bank; what was your connection, Doctor, during the summer?—A. I am a director in the bank and also a member of the finance committee.

Q. Do you know whether or not Mr. Greenhut had any knowledge of the mortgage made by Mansfield Moreno in connection with the loan or indebtedness of Scarritt Moreno of \$13,000 to the American National Bank?—A. Why, I knew it; the balance knew it; I do not see why he did not know it; it was before us.

Q. Before who?—A. The finance committee.

Q. Who was the finance committee?—A. Mr. Greenhut, Mr. McDavid, Mr. Covington, and myself and John Eagan.

Q. Did Mr. Greenhut, as a member of the finance committee, pass upon that paper, do you know?—A. Yes, sir.

Q. So that he knew of the loan and the character of it?—A. As I understand it, sir.

Q. Do you know, not as you understand, but do you recollect as to whether he did or not?—A. I knew he was present, and the way in which things are done, every paper is handled and Mr. Greenhut did when he was a member of the finance committee, he was the one usually that handled the papers, and as it was passed around the table and one would check and the other would call, and I see no reason why—

Q. Do you recollect that this was before the finance committee when Mr. Greenhut was present and discussed?—A. It was, sir.

Q. And handled by him?—A. He was there several times.

Cross-examination by B. C. TUNISON, Esq.:

Q. Did you ever see that mortgage?—A. Yes, sir; I saw the papers.

Q. Did you ever see the mortgage—the thirteen-thousand-dollar mortgage?—A. Well, it is all in a bundle; yes, it is all done up together.

Q. Are you certain that you saw that mortgage?—A. Yes, sir. I know I saw it. Respondent rests.

Thereupon the prosecution called in rebuttal DONALD McLELLAN, who, being duly sworn, testified as follows:

Direct examination by B. C. TUNISON, Esq.:

Q. Where do you reside?—A. Pensacola.

Q. What is your occupation?—A. Reporter.

Q. Reporter on what paper?—A. The News.

Q. How long have you been engaged as a reporter on the News?—A. About eighteen months.

Q. Mr. McLellan, do you remember the day of the affray between Mr. Greenhut and Mr. O'Neal?—A. I do not recall the date, but it was on Monday.

Q. You do recollect the occurrence, do you?—A. Yes, sir. I saw nothing of it, though.

Q. Did you, shortly after the occurrence, call on Mr. O'Neal?—A. Yes, sir; I sought an interview with him.

Q. Where was he at that time?—A. In his office.

Q. Just state what he stated to you there.—A. He did not want to talk at all at first, and said—I told him what I wanted—to get his statement of it, and I also wanted to see Mr. Greenhut, too—but Mr. O'Neal says that he was coming down the street; saw Mr. Greenhut, and was speaking to him, and the lie was passed, and he struck Mr. Greenhut, and Mr. Greenhut struck him.

Q. Did he or not say that Mr. Greenhut called him a liar?—A. I think, to the best of my recollection, that the lie was passed. I think that is what he said.

Q. Did Mr. O'Neal say anything to you about coming from a fighting family?

(Counsel for respondent objects to question.)

Q. What else did Mr. O'Neal say? Mr. McLellan, did Mr. O'Neal say to you, as you recollect it about as follows.

(Counsel for respondent object to witness being asked if Mr. O'Neal said so and so, but that he must be asked as to what he did say.)

The Court. I will rule with you in this case on this occasion, but my recollection is that I have heard many a hard and desperate battle right on that point, counsel on the one side insisting that counsel on the other should use the exact word which had been spoken.

Q. Mr. McLellan, shortly after that occasion you made a statement in writing as to what took place, didn't you?—A. Yes, sir.

Q. Will you look at this statement?

Counsel for respondent object to witness looking at paper until the witness has developed that he needs the writing to refresh his memory, and that has not been developed; otherwise it is the act of another party and not permissible for the witness to use.

Objection overruled, and exception noted.

Q. You wrote this statement, did you not?—A. Yes, sir.

Q. Where was this statement made?—A. At your office.

Q. At my office?—A. Yes, sir.

Q. At what time?—A. I think it was in the afternoon—after 4 o'clock—but what day I can not recollect.

Q. Was it about three or four days after the cutting?—A. Yes, sir.

Counsel for respondent object to counsel for prosecution asking witness the specified time instead of letting the witness state the time. He can ask when.

Q. How long after the cutting did you make this statement?—A. I can tell you this way: It was the day Mr. O'Neal was served with the writ of contempt.

Q. In this statement written by you, Mr. McClellan, you say—

Counsel for respondent object to counsel for prosecution making testimony by what a man said at an indefinite time after the occurrence.

The Court. It is a very common thing where a witness for any cause unknown to counsel that calls him makes a statement on the witness stand that is different from the statement which he has theretofore made to counsel, counsel has immediately the right to treat him, cross-examine and present him the paper made, and ask him if he did not say thus and so at such a time and about this statement, and which one is correct and which one is not. The testimony will only be admissible in that way and for that purpose.

Q. Mr. McClellan, what did you just state about the lie passing?—A. I think he said, Mr. O'Neal said the lie passed. He said the lie passed, and then followed that up by saying he called me a liar, and you know I could not take that.

Q. Well, did he state what he did when Mr. Greenhut called him a liar?—A. He said I struck him.

Q. Did he tell you what it was about?—A. He said it was a business matter. We were discussing a business matter—matter of business—and I would not care to state what it was, and I mentioned, I says: "Did the suit filed Saturday have anything to do with it?" and he hesitated a while, and said it did.

Cross-examination by W. A. BLOUNT, Esq.:

Q. Your business, I believe you say, is that of a reporter?—A. Yes, sir.

Q. Part of your business is to go into court and impeach what persons have said by saying what they have said to you, is it not?—A. What is that?

Q. It is a part of your business to go into court and impeach what persons have said—their testimony—by saying what they have said to you. Has that not been your practice frequently of late?—A. No, sir.

Q. Has it not been your practice to go into the criminal court for the purpose of contradicting persons by saying what they had said to you as a reporter?—A. Only one.

Q. Upon what occasion was that?—A. The burglary cases.

Q. Now, why was it just now, when you were asked by Mr. Tunison about the lie, and he asked you twice, you said that what Mr. O'Neal said was the lie passed and did not say anything about Mr. O'Neal saying that Mr. Greenhut had called him a liar?—A. Just recalled it.

Q. Why was it at that time you simply said Mr. O'Neal said that Mr. Greenhut, that he struck Greenhut, without making it follow the fact that Mr. Greenhut had called Mr. O'Neal a liar? Just recalled that?—A. Yes, sir; just answered the question.

Q. Did Mr. O'Neal say anything to you about this matter arising out of the Scarritt Moreno bankruptcy matter?—A. He did not mention that; just said I asked him "Did the suit of Saturday have anything to do with it?" and he said, "Yes;" but he did not say that for publication.

Q. But you are publishing it now, are you not?—A. Yes, sir.

Q. How did Mr. Tunison happen to get the fact from you?—A. I understood this writ had been filed, and I went to see Mr. Tunison and see whether—

Q. And then you told Mr. Tunison a thing which had not been given you for publication?—A. No, sir.

Q. You did not know that giving it to Mr. Tunison was publishing it, did you?—A. No, sir. I did not know that Mr. Tunison was Mr. Greenhut's lawyer.

Q. Why did you go to him?—A. I was told he had it.

Q. You did not know it then?—A. Not before I went to his office.

Q. And yet when this was not for publication the first officer you went to in connection with it you told all about; told what Mr. O'Neal had told you was not for publication?—A. I was talking man to man.

Q. But, Mr. McClellan, when you have an interview with a man and he tells you that it is not for publication, that means that it is not to be published, does it not?—A. Yes, sir.

Q. This was man to man, you say?—A. Not to be printed.

Thereupon the prosecution recalled A. GREENHUT, who testified as follows:

Direct examination by B. C. TUNISON, Esq.:

Q. How much paper of Scarritt Moreno, and Baars, Dunwody & Co., upon which you were indorser, did the American National Bank have at the time of the failure of Baars, Dunwody & Co.?—A. I could not say exactly. As well as I can remember, I think only paper was one for \$500, \$750 of Baars, Dunwody & Co. I have taken that up. There was another for three or four thousand, possibly a little over, of Scarritt Moreno's paper discounted by me and all taken up, and then there was thousands of dollars of other papers there.

Q. You took up all the paper of Scarritt Moreno or of Baars, Dunwody & Co. except this one piece of paper of \$1,500 did you not?—A. I think everything taken up except possibly one paper of \$60.

Q. Overdue or not? All the other paper upon which you were liable of Baars, Dunwody & Co. or Scarritt Moreno, except this \$1,500 piece of paper, was provided for by you?—A. Yes, sir.

Q. Mr. Greenhut, why didn't you pay this \$1,500 payment?—A. Because I did not think I was treated right.

Q. Did you consult your attorney about that \$1,500 payment?—A. Yes, sir.

Q. Who was your attorney?—A. Mr. W. A. Blount.

Q. Did you state all the facts bearing on that paper to Mr. W. A. Blount?—A. I think I did.

Q. Did Mr. Blount prepare the plea that was filed in that case?—A. I think so; he sent it down to me.

Being hour for adjournment for noon recess, court thereupon adjourned until 3.30, both prosecution and respondent having closed their testimony.

AFTERNOON SESSION.

COUNSEL FOR PROSECUTION. May it please your honor, there were two witnesses that the prosecution failed to present this morning, and which it is very desirous of now putting on the stand. They will not occupy more than five minutes.

The COURT. Very well.

Thereupon the prosecution called Lep. Mayer, who, being duly sworn, testified as follows:

Direct examination by B. C. TUNISON, Esq.:

Q. Where do you reside?—A. Pensacola, Fla.

Q. Do you recollect the occasion of the affray between Mr. Greenhut and Mr. O'Neal?—A. Yes, sir; I recollect it.

Q. Did you see any portion of it?—A. No, sir; I did not see any portion of it.

Q. Did you see Mr. O'Neal immediately after he and Mr. Greenhut were separated?—A. I was there.

Q. Did you see the knife that Mr. O'Neal had in his hands?—A. Yes, sir; I held the handle of the knife this way.

Q. I show you the knife, Mr. Mayer. Is that the knife that Mr. O'Neal held in his hands?—A. No, sir; that is not the knife.

Q. What kind of a knife did Mr. O'Neal have in his hands?—A. It was a sort of bone-handled knife.

Q. What was the condition of the blade of that knife, Mr. Mayer?—A. It looked like it was sharpened—freshly sharpened—to me. Of course, I got hold of the handle of the knife and I cut myself.

Cross-examination by W. A. BLOUNT, Esq.:

Q. Mr. Mayer, did you have the knife in your hands?—A. I held Mr. O'Neal's hand and tried to take the knife out of his hand, but I could not, and Mr. Hyer came up, and in the meantime Mr. Hyer came up and says "Turn loose," and they turned loose.

Q. They turned loose; who do you mean by "they"?—A. Mr. O'Neal turned Mr. Greenhut.

Q. What do you mean by "they," then?—A. Mr. O'Neal and Mr. Greenhut.

Q. Both turned loose? Well, now, you held Mr. O'Neal's hand—A. I was trying to take the knife out.

Q. And he had the knife in his hands? Did he not have the handle inclosed in his hands?—A. Yes, sir; a portion of it.

Q. And you simply saw a portion of the handle?—A. Yes, sir.

Q. And yet you are able to swear that that is not the knife?—A. Yes, sir.

Q. You can?—A. I can swear that that is not the knife that I saw.

Q. And yet the knife that you saw was almost entirely inclosed in Mr. O'Neal's gripped hand?—A. I could see the top of it.

Q. That is all you saw?—A. Yes, sir.

Q. Saw the top metal?—A. Around here; this portion here was a little metal.

Q. This is always of metal, is it not?—A. Yes, sir.

Q. And during that time of excitement you were able to see what kind of a knife he had clinched in his hand?—A. I was there about five minutes.

Q. And tried to hold his hands for five minutes and wrenched his hands and tried to get it loose?—A. Yes, sir; tried to take it loose, but could not get it loose.

Thereupon the prosecution called one A. L. RETTINGER, who, being duly sworn, testified as follows:

Direct examination by B. C. TUNISON, Esq.:

Q. Do you remember the occasion of the affray between Mr. O'Neal and Mr. Greenhut?—A. Well, I saw it after the cutting was all through with; they were clinched.

Q. Did you see the knife that Mr. O'Neal had in his hands?—A. He walked right by me; he walked right by me with the knife in his hands.

Q. Did you see the knife in his hands?—A. I saw a portion of it; did not see the whole knife and blade.

Q. Did you see a portion of the handle of the knife?—A. About the ear of the knife.

Q. Is that the knife, sir [exhibiting to witness knife]?—A. That don't look like it; it looked to be a very bright blade and the handle looked to be either pearl or white horn.

Q. Was the blade— A. It was a slender blade.

Thereupon the respondents called in rebuttal one A. M. HYER, who, being duly sworn, testified as follows:

Direct examination by W. A. BLOUNT, Esq.:

Q. Were you present at the time of this affray which has been testified to between Mr. O'Neal and Mr. Greenhut?—A. I was there at the wind-up, sir.

Q. Did you see the knife that Mr. O'Neal had?—A. I saw the blade; yes, sir.

Q. Did you see it at the time that Mr. Mayer was trying to take it away?—A. I saw the blade of it.

Q. Was it so held that you could see anything but the blade?—A. I could not.

No cross.

COUNSEL FOR PROSECUTION. It has been agreed between counsel that the case shall be submitted without argument.

The COURT. In that event, then, the court will render its decision at 10 o'clock to-morrow a. m.

Court thereupon took a recess until 10 a. m. following day.

MORNING SESSION, DECEMBER 9, 1902.

By the JUDGE:

In the matter of the rule on W. C. O'Neal to show cause why he should not be punished for contempt upon the statements set forth in the rule of contempt and

affidavit of A. Greenhut, thereto attached, the court, in going over the affidavit and the answer of the respondent and considering carefully the testimony which was given yesterday, has come to the following conclusion:

The charges set out in the affidavit made by Mr. Greenhut, so far as they relate to the interference with an officer of this court are concerned, are, in substance, as follows:

Mr. Greenhut alleges in his affidavit that he was the trustee in the bankruptcy matter of Scarritt Moreno; that he had filed a bill against the American National Bank et al., of which the respondent, O'Neal, was president; the bill was filed on Saturday, October 18, of this year, 1902; he alleges that on October 20, Monday following that day, the respondent assaulted him, because, as an officer of this court, he had instituted the suit aforesaid.

He alleges that the assault was made to interfere and prevent him from performing the duties as such officer, and that such assault did interfere with him as such officer in the performance of such duties.

The respondent, by his answer, admits that he knew Mr. Greenhut was trustee in the bankruptcy estate of Scarritt Moreno.

This was further established by the record which was put in evidence. He admits that he knew the bill recited in Mr. Greenhut's affidavit had been filed against his bank, and he alleges further that Mr. Greenhut knew said bill to be in fraud of the bank.

He admits that he went to the office of the officer of this court, Mr. Greenhut, to reproach him for having brought the suit mentioned, and he asserts that he did reproach him for bringing the said suit, and he asserts that Mr. Greenhut knew when the suit was brought that there was no foundation therefor.

Up to this point in the matter there is little conflict in the statements of either party, but from this point on the statements of the affiant, Greenhut, and the respondent, O'Neal, do not agree. Mr. O'Neal interpolates into his answer something about another suit which the bank had brought against Mr. Greenhut, and that part of the conversation which he had with Mr. Greenhut was in regard to that suit. This Mr. Greenhut denies. Mr. O'Neal says, however, that the principal conversation that he had on that occasion with Mr. Greenhut was in regard to the other suit which had just been brought on Saturday the 18th, and not as to the suit that had been brought a month or two before by the bank against Mr. Greenhut. From this point on there is a direct and positive contradiction by the affiant and by the respondent in most of that that is important and critical in this case, and the court is compelled, in deciding the case, to say who is stating the truth about it. From that position there is no escape.

Mr. Greenhut says, in a general way, without reading his statement or following his testimony, that after a conversation with himself and O'Neal about this transaction, that O'Neal made some remark and they had some words passed which were not pleasant, and that Mr. O'Neal started to the door and that he, without thinking or suspicioning any trouble, started after him and within a short distance of him; that suddenly, and without warning or any suspicion, that Mr. O'Neal turned with a knife and assaulted him, cutting him in the way shown to the court, which was a very serious way; I do not care to say much about it further than this, that it seems to the court that it was the merest accident in the world that Mr. Greenhut's life was not taken and that he was not forever prevented from appearing in this court to, or anywhere else to, attend to any duties whatever.

Mr. O'Neal says that they had some words, that perhaps in this connection it would be fairer to Mr. O'Neal to read what he swears to in his answer: When the respondent turned to leave the office and when he had nearly reached the door he turned and said to Greenhut: "Well you know you lied about the Moreno acceptance, for you said that you would pay it," the Moreno acceptance being the negotiable paper hereinbefore mentioned. As the respondent turned saying this he noticed that the said Greenhut was following him and as he said it the said Greenhut, who was short, stout, heavily built, and apparently much more muscular than respondent, struck the respondent, who is thin and feeble, and forced him against the railing in said office. That respondent shoved the said Greenhut a little way from him, but he, the said Greenhut, instantly recovered and rushed at respondent with his arm uplifted to strike, when respondent drew from his pocket a small pocketknife and opened it in order to protect himself, and upon said Greenhut rushing again upon him, cut him therewith, while the said Greenhut was still following and endeavoring to strike him.

That it is not true that the respondent at any time said to the said Greenhut that he, the respondent, would settle the matter, but the facts are as hereinbefore stated.

Taking the respondent's own statement as true, the court holds as a matter of law that the cutting was entirely unjustifiable.

It is a recognized rule of law by everybody who knows any law that in order to justify anyone with an assault with a deadly weapon they must first retreat as far as they can get when assaulted, and when they can go no farther, if their assailant has something which is likely to endanger their life or do them great bodily harm, as I remember the language, only then are they entitled to assault anyone with a knife, pistol, or any weapon for self-protection. Otherwise, if there is an opportunity to flee, they must go, and if they do not, and stand and what is commonly called "fight," and they injure their assailant, they are responsible therefor. The testimony of both parties here says that the office door was open; the testimony of both parties places Mr. O'Neal so that he could have leaped out of the office instantly and gotten out of Mr. Greenhut's way in case Mr. O'Neal's story is correct. He did not do so, according to his own statement, but according to his own statement says that he would not fight in the office, but if he would come into the street he would fight. But Mr. Greenhut, as I have said, contradicts Mr. O'Neal flatly, and Mr. O'Neal contradicts Mr. Greenhut flatly, and in disposing of this case the court must decide between them. There is no escape from that duty, unpleasant as it may be, and the court takes it up in this way. First, as to the reasonableness of the assault. Taking ordinary men having such an altercation as Mr. O'Neal says they had, ordinary men, what would be the natural effect of such conversation in an office between two men? Would the one man, Greenhut, who was affronted and insulted, strike his assailant quickly in the face for the insult, or would he follow him and attempt to strike him in the back? If he were such a powerful and muscular man and did attempt to follow and strike, would that attempt have no more effect upon Mr. O'Neal than the red spots sworn to upon the side by Doctor Hannah? That is one way that the court looks at it.

Leaving the testimony of the two men out of the question and looking at the reasonableness of the situation. Next, take the two testimonies. The one tells one story and the other the other. What must be done under those circumstances? No living witness testified to what he saw except the two parties. The court must dispose of the truth or falsity of those statements upon their sworn testimony and what additional light it can get, and in that connection it turns to the record and character of the two men for peace and good order and quiet. Eight or ten or a dozen of the best citizens of Pensacola appeared and testified, or it was admitted upon the part of the respondent that they would so testify, and their testimony was waived, that Mr. Greenhut was a gentleman of quiet, peace, and good order; in truth, at this hearing no intimation was made, no attempt was made to intimate that Mr. Greenhut had ever had a quarrel, wordy quarrel even, with any living being. On the other hand, the record of Mr. O'Neal, as shown, was not of that character. I do not care to go over it. It is not a pleasant task, and I won't review it particularly, but simply refer it as a fact, that taking the record of Mr. O'Neal on the one hand, showing his character and disposition and troubles that he had had in different places, and the utter absence of everything of that character as regards Mr. Greenhut on the other, the court is compelled, in the direct conflict of testimony between the two men, to say that it believes Mr. Greenhut's story of this controversy and to disbelieve the story told by Mr. O'Neal. So much for the reasons of the finding.

I want to say further, that in disposing of this case the court has no intention to interfere or in any way usurp the jurisdiction or the authority or action of any other tribunal that may look to the matter between the State and Mr. O'Neal. The action that the court will take and feels compelled to take will only be such action as is necessary for the interference by Mr. O'Neal with the duties of an officer of this court. The sentence of the court will be in the matter that Mr. O'Neal will be confined in the county jail of this county for the term of sixty days.

COUNSEL FOR RESPONDENT. Your honor will, I assume, suspend the execution of that sentence for a half hour in which we can present to the court the papers necessary for the perfection of a writ of error to the Supreme Court of the United States.

COUNSEL FOR PROSECUTION. I would like to raise the question in the first place as to whether that a writ of error in the matter of contempt does not lie, and, secondly, that even if it did lie, there is no such thing as a supersedeas in a contempt proceeding.

THE COURT. I will give Mr. Blount an opportunity to make a hearing. I wish to say here in regard to supersedeas that while I have granted three or four perhaps in thirteen years, I have always granted them on my own judgment, not where they were asked for in every instance, but where there was any ground to contend that there was a question of law involved. There was one in Dallas, Tex., that I granted of my own motion without being asked for it, because there was such a question of law. In ninety-nine cases out of a hundred in which they are asked there is no

question of law—there is no question of law left which has not been disposed of and the purposes would not further the ends of justice. In the case at bar that question must be disposed of in the same way; if, upon looking over these decisions, the court is of the conclusion that there is, as counsel has very properly put it, a reasonable doubt in the mind of the court, a doubt which takes hold of the court's mind at all for the Supreme Court to go on, a supersedeas will be granted. It will only be refused in this case and in other cases where there is nothing for the court to pass upon at all. That is all I can say at present, and if the court makes an error it can be readily corrected.

COUNSEL FOR RESPONDENT. Will your honor be here at half past 3? I would like to present an oral argument on the question, perhaps.

The Court. I desire to look at the cases in my room and read just what the court—the Supreme Court—has said. The court likes to read it itself and think about it and look at it. I have no objection to hearing counsel's views of it, but the court makes up its own idea and can understand it better when it reads the cases itself.

Court thereupon took a recess till 3.30 p. m.

AFTERNOON SESSION.

The Court. This being an unusual case, and, so far as I know, this particular proposition of law never having been decided, and the counsel very properly voiced the position of the court before adjournment, that the court had no personal feeling, no desire to oppress anyone illegally nor to imprison anyone illegally. I have no hesitation in saying that if Mr. O'Neal went to jail for sixty days and about that time, or subsequently, the Supreme Court should reverse my action the effect would not be good in any sense on the community, and this court would feel very much chagrined, exceedingly so; no hesitation in saying so. I will avoid being placed in that position with a great deal of care. On the other hand, if the case goes up and the Supreme Court should affirm my action, then all criticism of this court's action is effectually disposed of when the highest tribunal has passed upon the action of this court. Those are, perhaps, in a measure personal, but they are sufficient to the court to be worthy of mention. Much more important, I judge, is the fact there ought to be a ruling of that court upon this statute, and I really have decided, without any further discussion of the case, to allow the appeal, and allowing the appeal will allow the supersedeas bond until the bill is disposed of, or until it is dismissed or whatever course counsel representing the court may deem best to take, and that will be the course without any further delay or discussion of the matter, and for the reasons which I have assigned.

It is needless to say that after my action in this case has been disposed of there will be no more supersedeas cases in similar cases while I sit here; and never having had a case like this, I have concluded to make this exception now and will allow the appeal and will allow a supersedeas bond. The court under the circumstances has no anxiety about Mr. O'Neal's going away, and a bond of \$1,000 will answer the purpose.

COUNSEL FOR RESPONDENT. The court will make an order allowing fifteen days in which to present a bill of exceptions?

The Court. Certainly.

STATE OF FLORIDA, *County of Escambia:*

Before me personally appeared Lee Daniell, who, being duly sworn, says: That he was the stenographer who reported the proceedings in the United States district court in and for the northern district of Florida, at Pensacola, Fla., in the matter of the contempt of W. C. O'Neal. That the foregoing pages hereto attached and numbering from 1 to 70, consecutively and inclusive, is a true report of such proceedings as taken by me in shorthand at the time and now reproduced from said shorthand notes.

LEE DANIELL.

Sworn to and subscribed before me this 28th day of January, A. D. 1905.

[SEAL]

J. W. MARSH,

Clerk United States District Court Northern District Florida.

Mr. Manager POWERS. I now desire to call one witness only, and that will complete the evidence in support of this charge. That witness is Mr. W. A. Blount. I understand that he is in attendance.

Mr. BACON. Mr. President, before the manager proceeds, as he says he will call only one witness, I desire to know whether the affidavits

and such other matters as were included in these answers are offered and accepted as evidence without testimony being given from the stand? I simply wish the information.

Mr. HIGGINS. Mr. President, there is no objection on the part of the respondent.

I will state, Mr. President, in respect to that matter, that this is the first trial in this court I am aware of where a stenographic record of what occurred in another court has been presented here.

In the Peck case, seventy-five years ago, the testimony of what occurred in Judge Peck's court was entirely dependent upon the oral testimony of the witnesses who were present at that trial. It has seemed to counsel for the respondent that they were fortunate in the O'Neal case that a stenographic record had been made and preserved, and that it could be presented here, so that this court would know precisely what had occurred there.

I think, therefore, it is better that it should go in in that form, even though without the sanction of an oath in this tribunal.

Mr. FORAKER. Mr. President, while Senators in that part of the Chamber are acquiescing in the suggestion that this testimony shall go in without being read, upon the assumption that when counsel come to sum up the case and present it to the court they will call attention specifically to such parts of the record as they regard as material and upon which they rely, if that is not to be clearly understood, we want to have all the testimony read.

WILLIAM A. BLOUNT sworn and examined.

By Mr. Manager POWERS:

Q. Mr. Blount, where do you reside?—A. Pensacola, Fla.

Q. What is your profession or occupation?—A. Attorney at law.

Q. How long have you been in the practice of the law?—A. Thirty-one years last November.

Q. Will you state whether or not you are a member of the United States courts?—A. I am; of all of them.

Q. And of the State courts of Florida?—A. I am.

Q. Are you acquainted with Judge Charles Swayne?—A. I am.

Q. For how many years?—A. Since 1888 or 1889.

Q. And whether or not you have had occasion to practice law before Judge Swayne in the district court of Florida?—A. Ever since that time.

Q. I will ask you, Mr. Blount, to what extent have you practiced law before Judge Swayne?—A. I have constantly practiced before him at every term of the court. I have had quite a practice in his court.

Q. I think you are a brother of Mr. Blount who testified yesterday?—A. A. C. Blount, jr.?

Q. Yes.—A. Yes.

Q. And whose firm is known as Blount & Blount?—A. Yes.

Q. State whether or not you were counsel for W. C. O'Neal in the contempt proceedings in 1902 before Judge Swayne.—A. Our firm was, and I conducted the business on behalf of the firm.

Q. Do you remember what condition the case was in when you first appeared before Judge Swayne—that is, I mean, what stage was it in?—A. He had been cited to appear to answer charges of contempt and came to me before any proceedings were taken except the citation.

Q. And was the citation backed up by an affidavit or petition?—A. It was.

Q. That was the petition of a complainant, Mr. Greenhut?—A. Yes.

Q. Will you state whether or not you filed any demurrer to that petition?—A. I did.

Q. And whether or not you argued that demurrer before Judge Swayne?—A. I did.

Q. What legal proposition was involved in the demurrer which you filed?—A. The proposition that was involved was whether, under the act of 1831, Mr. O'Neil had been guilty of a contempt of the district court of the United States for the northern district of Florida.

Q. Will you state whether or not you brought to the attention of Judge Swayne the statute of 1831?—A. I did.

Q. And whether or not you brought to his attention any other statute that was pertinent to the issue?—A. I do not remember at this moment any other statute than the act of 1831, as embodied in the Revised Statutes.

Q. Will you please state, Mr. Blount, whether in your argument upon this demurrer you brought to the attention of Judge Swayne any citations of any courts construing the statute of 1831?—Yes; I did.

Q. What cases were brought to Judge Swayne's attention in your argument by you?—A. I remember at this time the case of *Ex parte Poulsen*, decided by Justice Baldwin, and reported in 19 Federal Cases; also the case of *Ex parte Robinson*, reported, as I recollect, in 19 Wallace. There were some other cases, but I have not had occasion to refresh my memory since that time, and I do not now remember them.

Q. What was your contention as raised by your demurrer?—A. My contention was that neither of the three branches of the first section of the act of 1831 covered Mr. O'Neal's case; that he was not an officer of the United States, and consequently was not engaged in any official transaction; that he was not in the court room nor in the presence of the court or so near thereto as to embarrass the administration of justice, and that he was not in obstruction or disobedience of any affirmative mandate, order, or decree of the court.

Q. Will you state whether or not you argued all those propositions fully before Judge Swayne?—A. I did.

Q. Later on, I think, witnesses were called, were they not, in that proceeding?—A. Yes.

Q. Were you present at that time as counsel for the respondent?—A. I was throughout the whole proceeding.

Mr. Manager POWERS. I think, Mr. President, that is all I care to interrogate Mr. Blount.

Cross-examined by Mr. HIGGINS:

Q. Mr. Blount, was any further proceeding taken by you for O'Neal, or by O'Neal through you, after the judge rendered his decision?—A. Yes; I applied for and obtained a supersedeas pending a writ of error to the Supreme Court of the United States, upon the ground that Judge Swayne did have no jurisdiction of the case.

Q. On that ground?—A. Yes.

Q. Who granted the supersedeas?—A. Judge Swayne.

Q. You applied to him?—A. Yes.

Q. Was there any hesitancy on his part in granting it?

Mr. Manager PALMER. Mr. President, I object to that line of examination.

Mr. HIGGINS. I withdraw the question. (To the witness.) Was a bond given?

A. A bond was given.

Q. In what amount?—A. A thousand dollars.

Q. Did you prosecute the writ of error to the Supreme Court?—A. I did.

Q. Did or did not the judge, under the act of 1891, certify your question of jurisdiction to the Supreme Court?—A. He did.

Q. Therefore the question as to whether his court had jurisdiction or not of the case as made in Greenhut's affidavit, and your demurrer, and the judge's certificate all went to the Supreme Court of the United States for adjudication?—A. Yes.

Q. What did it decide?—A. It decided that it was not a question of jurisdiction at all brought up by the demurrer; therefore the act of 1891 did not apply.

Q. Did it not decide that the jurisdiction both of the person—that is, of O'Neal—and of the subject-matter—that is, the alleged acts of contempt—being not challenged, the court would not undertake to pass upon the merits of the case?—A. Singly, yes. They said I challenged the facts and did not challenge the jurisdiction of the court.

Q. So, upon the face of those proceedings Judge Swayne's court did have jurisdiction of that subject-matter and to try O'Neal?—A. That is what I understand the court to have decided.

Mr. HIGGINS. That is all.

By Mr. Manager POWERS:

Q. A single question, Mr. Blount. The court decided that it was the affidavit of Greenhut that gave the court jurisdiction?—A. Yes; that Judge Swayne had the right to try the general class of cases included under the term of contempt, and had jurisdiction of the person of O'Neal, and therefore it was not a question of jurisdiction.

By Mr. HIGGINS:

Q. After that, what course did the proceeding take?—A. I then applied for a writ of habeas corpus to Judge Pardee, the presiding judge of the fifth judicial circuit.

Q. Was that matter heard before him?—A. It was heard before him and the other judges.

Q. What other judges?—A. Judges Shelby and McCormick.

Q. What was their decision?—A. Their decision was that the attempt by habeas corpus was an attempt to impeach the judgment collaterally, and that, Judge Swayne having jurisdiction, it could not be done.

Q. Therefore it distinctly rested upon the decision that he had jurisdiction?—A. No.

Q. Did you or not on behalf of O'Neal in the circuit court of appeals file a supplementary paper stating further facts going to show that the district court did not have jurisdiction over this matter of contempt, in that the place where the assault of O'Neal on Greenhut took place was at a distance from the United States court?—A. I attempted to file a paper of that kind. I do not recollect just now whether it was filed or not or whether consideration was given to it.

Q. Did you not recollect that the court in their decision said that those considerations contained in that paper made no difference?—A. I think so. Of course the decision would show for itself.

Mr. HIGGINS. That will do.

Reexamined by Mr. Manager POWERS:

Q. As I understand, Mr. Blount, both the Supreme Court and the circuit court found that Judge Swayne had jurisdiction of that case?—

A. Yes.

Q. Now, did either of those courts go into the merits whether under the statute of 1831 he had the right to punish O'Neal for contempt?—

A. Neither of them. Both cases distinctly went off on the question of jurisdiction.

Q. In other words, you undertook to get up the question of merit and failed?—A. Yes.

Q. And failed in both instances?—A. That is not exactly correct. I did not attempt to get up the question of merits in either case. In the first case I attempted to show that Judge Swayne did not have jurisdiction because the statute of 1831 was, as I contended, the full measure of his power, and he had no power to try the case upon the facts as shown upon the face of the affidavit.

Q. Then you took it on a habeas corpus to the United States circuit court?—A. Yes.

Q. What did the circuit court say?—A. I was met by the same response, practically, that the judge had jurisdiction of the subject-matter of contempts, and whether the statute of 1831 gave him power or not was a question not to be considered by the court.

Mr. Manager POWERS. I think, Mr. President, that is all the evidence we have in support of the twelfth article.

Mr. FAIRBANKS. I move that the Senate, sitting as a court of impeachment, do now adjourn until to-morrow.

The motion was agreed to; and (at 5 o'clock and 5 minutes p. m.) the Senate, sitting as a court of impeachment, adjourned until to-morrow, February 15, at 2 o'clock p. m.

The managers on the part of the House and the respondent and his counsel retired from the Chamber.

IN THE SENATE, *February 15, 1905.*

The PRESIDENT pro tempore. The hour of 2 o'clock having arrived, to which the Senate, sitting as a court of impeachment, adjourned, the Senator from Connecticut [Mr. Platt] will please take the chair.

Mr. PLATT, of Connecticut, assumed the chair.

The PRESIDING OFFICER (Mr. Platt, of Connecticut). The Senate is now sitting in the trial of the impeachment of Charles Swayne, United States judge in and for the northern district of Florida. The Sergeant-at-Arms will make proclamation.

The Sergeant-at-Arms made the usual proclamation.

The PRESIDING OFFICER. The Sergeant-at-Arms will see whether the managers on the part of the House are in attendance.

The managers on the part of the House of Representatives were announced by the Assistant Sergeant-at-Arms, and by him conducted to the seats assigned them.

The respondent, Judge Charles Swayne, accompanied by his counsel, Mr. Higgins and Mr. Thurston, entered the Chamber and took the seats assigned them.

The PRESIDING OFFICER. The Journal of the last trial day will be read.

The Journal of the proceedings of the Senate sitting for the trial of the impeachment Tuesday, February 14, was read.

The PRESIDING OFFICER. Are the managers ready to proceed?

Mr. Manager OLMSTED. Mr. President, we desire to call Mr. Wilson.

Mr. STEWART. Mr. President, I suggest that the manager in examining the witness shall stand at the back row, because the witness will necessarily direct his replies to him. Otherwise we shall not be able in this part of the Chamber to hear the testimony.

The PRESIDING OFFICER. If convenient to the managers, when examining witnesses they might take a place by the desk of the Senator from Nevada.

Mr. STEWART. The manager can take my chair.

EVERARD MEADE WILSON, sworn and examined.

By Mr. Manager OLMSTED:

Q. Mr. Wilson, where do you reside?—A. Pensacola, Fla.

Q. What is your occupation?—A. Conductor on a passenger train on the L. and N. Railroad.

Q. The Louisville and Nashville Railroad?—A. Yes, sir.

Q. How long have you been a passenger conductor on that road?—A. About ten years.

Q. Do you know Judge Swayne?—A. I do.

Q. State whether or not he has ridden with you more or less in each year for the past seven or eight years.—A. I am unable to state positively whether he rode with me each year in the last eight or ten years, but I have seen him a number of times on my train in the last eight or ten years.

Q. According to the best of your recollection, has he ridden with you once or more in each year?—A. He has.

Q. Will you state upon what manner of transportation he rides? What is the character?—A. On all the trips but one he rode on a pass.

Q. On what did he ride on the other occasion?—A. He had a ticket, sir.

Q. When was that?—A. During the time that this committee was sent to Florida in this same case; on or about February the 17th. I am not quite sure that is the date, but on or about that time last year—1904—he rode from Pensacola to River Junction with me on a ticket, accompanying the party that was the committee sent there from this place to investigate this matter.

Q. That was the first and only time he rode on a ticket?—A. It was, on my train.

Mr. Manager OLMSTED. That is all.

The PRESIDING OFFICER. Do counsel for the respondent desire to cross-examine the witness?

Mr. THURSTON. No.

MARTIN DAWSEY MERRITT, sworn and examined.

By Mr. Manager OLMSTED:

Q. Where do you reside?—A. Pensacola, Fla.

Q. What is your occupation?—A. Passenger conductor on the L. and N.

Q. What is the L. and N.?—A. The L. and N. Railroad Company.

Q. The Louisville and Nashville Railroad?—A. Yes, sir.

Q. How long have you been such conductor?—A. Fourteen years.

Q. Do you know Judge Swayne, the respondent?—A. Yes, sir.

Q. State whether or not he has during the last seven or eight years ridden with you once or more in each year?—A. To the best of my knowledge, for the last ten years he has been riding with me.

Q. State on what character of transportation he rides—whether on a paid ticket, whether he pays his fare, or not.—A. He has always held an annual pass while with me.

Mr. Manager OLMSTED. That is all. [To the counsel for the respondent.] Cross-examine.

Mr. THURSTON. That is all.

HENRY FRANKLIN WEBB, sworn and examined.

By Mr. Manager OLMSTED:

Q. Where do you live?—A. Pensacola, Fla.

Q. What is your occupation?—A. Conductor on the L. and N. Railroad.

Q. Passenger conductor?—A. Yes, sir.

Q. How long have you been passenger conductor on that railroad?—A. About nine years.

Q. State whether you know the respondent, Judge Swayne?—A. I do not know him. I rode with him on the train. I have seen him once or twice, I believe. I do not know whether I would recognize him now or not. It has been a year or so ago.

Q. State the character of his transportation—whether he paid his fare, or used a pay ticket, or whether in some other way?—A. He had a pass—an L. and N. pass.

Mr. Manager OLMSTED. That is all.

No cross-examination.

Mr. Manager DE ARMOND. I will have Mr. E. T. Davis called.

ELZA T. DAVIS appeared.

Mr. Manager DE ARMOND. Mr. President, if there be no objection, I should like to have read the provision of the statute which governs punishments summarily for contempt. Of course I do not offer it as evidence, but I should like to have it read for the convenience of the court.

The PRESIDING OFFICER. If there be no objection, the Secretary will read the statute.

The Secretary read as follows:

SEC. 725. The said courts shall have power to impose and administer all necessary oaths, and to punish, by fine or imprisonment, at the discretion of the court, contempts of their authority: *Provided*, That such power to punish contempts shall not be construed to extend to any cases except the misbehavior of any person in their presence, or so near thereto as to obstruct the administration of justice, the misbehavior of any of the officers of said courts in their official transactions, and the disobedience or resistance by any such officer, or by any party, juror, witness, or other person, to any lawful writ, process, order, rule, decree, or command of the said courts.

Mr. Manager DE ARMOND. Mr. President, if there be no objection, I should like to have read also the provision of the law for the punishment of another class of contempts through the ordinary process of indictment and trial by jury.

The PRESIDING OFFICER. If there be no objection, the Secretary will read as requested.

The Secretary read as follows:

SEC. 5399. Every person who corruptly, or by threats or force, endeavors to influence, intimidate, or impede any witness or officer of any court of the United States in the discharge of his duty, or corruptly, or by threats or force, obstructs or impedes, or endeavors to obstruct or impede, the due administration of justice therein, shall be punished by a fine of not more than \$500, or by imprisonment not more than three months, or both.

Mr. Manager DE ARMOND. Mr. President, I offer now the record in the proceedings in the case for contempt against E. T. Davis, and I should be glad to have the Secretary read the record down to and including the judgment of the court—Judge Swayne—in disposing of the case. Of course, we wish the whole record to go in, but I do not care to have more than that read now.

The PRESIDING OFFICER. The Secretary will read as requested, if there be no objection.

Mr. Manager DE ARMOND. Read from the beginning down to the mark. I do not care about the formal parts being read, but the substance.

The Secretary read the portion of the record indicated by Mr. Manager De Armond.

Mr. Manager DE ARMOND. Mr. President, to save time the Secretary might omit reading until he gets to the next page. Let him read the marshal's return and the indorsements. It simply recites the matter already read, and I do not care to take time in reading it.

The Secretary read the portion of the record indicated.

The entire record in the case of *The United States v. E. T. Davis* is as follows:

In the circuit court of the United States, northern district of Florida. *The United States v. E. T. Davis.*

Be it remembered that on the 11th day of November, A. D. 1901, at a term of the United States circuit court in and for the northern district of Florida, held at Pensacola, the following motion was made in open court and entered of record, to wit:

"And now comes W. A. Blount, an attorney and counselor at law of this court, and practicing therein, and as amicus curiæ, and moves the court to cite Simeon Belden, Louis Paquet, and E. T. Davis, attorneys and counselors of this court, to show cause before this court at a day and hour to be fixed by the court why they shall not be punished for contempt of the court in causing and procuring, as attorneys of the circuit court of Escambia County, Fla., a summons in ejectment, wherein Florida McGuire is plaintiff and the Hon. Charles Swayne is defendant, to be issued from said court and served upon the judge of this court, to recover the possession of block 91 in the Cheveaux tract, in the city of Pensacola, Fla., a tract of land involved in a controversy in ejectment then depending in this court in a case wherein the said Florida McGuire was plaintiff and the Pensacola City Company et al. were defendants, upon the grounds:

"1. That the said suit in ejectment against the judge of this court was instituted after a petition to this judge to recuse himself in the said case of *Mrs. Florida McGuire v. Pensacola City Company et al.* had been submitted to the court on November 5, 1901, and denied, and after the said judge had stated in open court and in the presence of the said counsel, Simeon Belden and Louis Paquet, that an allegation of the said petition that he or some member of his family were interested in or owned property in said tract was untrue, and had stated that he had refused to permit a member of his family to buy land in said tract because the said suit of Florida McGuire, involving the title to the said tract, was in litigation before him, the said judge.

"2. That after the said declaration of the said judge the said counsel were aware that neither the said judge nor any member of his family were the owners of or interested in any part of the said tract, and had no reason whatever to believe that he or they were so interested, and knew, or could easily have known, that the said block was not in the possession or control of anyone, but was entirely unoccupied.

"3. That the said suit against the said judge was instituted on Saturday night, the 9th instant, after 6 o'clock, and after the court had overruled the motion of the said attorney to postpone the trial of the case of *Florida McGuire v. Pensacola City Company et al.* for a week or more, and after the said judge had announced to the said counsel that he would call the case for trial on Monday, November 11, 1901, and would then try the case, unless counsel for plaintiff made a showing why he should not so try, and the said counsel had announced that they would make such showing.

"4. That the said E. T. Davis was, before the instituting of the said suit against the said judge, cognizant of all the facts herein set forth.

"W. A. BLOUNT,

"*An Attorney of this Court.*"

"NOVEMBER 11, 1901."

And afterwards, and on the same day, to wit, on the 11th day of November, A. D. 1901, the following order was made and entered of record in the said cause, to wit:

"In re matter of contempt proceedings against Simeon Belden, Louis Paquet, and E. T. Davis.

"Upon reading the motion of W. A. Blount, an attorney and counselor of this court, for a citation to Simeon Belden, Louis Paquet, and E. T. Davis why they should not be committed for contempt, for the reasons set forth in said motion, and after consideration of the same, it is ordered:

"That the same Simeon Belden, Louis Paquet, and E. T. Davis be, and they are hereby, cited to appear before me, Charles Swayne, judge of this court, at 10 o'clock a. m. on Tuesday, November 12, 1901, to show cause why they should not be punished for contempt upon the grounds and for the reasons set forth in the said motion, which is now of record in the records of said court, and a copy of which is to be attached by the clerk to the copy of this order served upon the said Simeon Belden, Louis Paquet, and E. T. Davis.

"Ordered in open court, this 11th day of November, A. D., 1901.

"CHAR. SWAYNE, Judge."

At the time of the presentation of the said motion by the said W. A. Blount in open court, on November 11, 1901, the said Simeon Belden and the said E. T. Davis were present in the said court, and before making said order the said judge made and directed to be spread upon the minutes the following declaration concerning his connection with the land in the Cheveaux tract mentioned in said motion, to wit:

"On Tuesday, November 5, 1901, at the time of the presentation of the said motion by plaintiffs, that the court recuse himself, he had then stated and now states that he never agreed to accept nor ever accepted any deed to any portion of the said Cheveaux tract; that, as he stated, a member of his family, to wit, his wife, had, with money inherited by her from her father's estate, negotiated for the purchase of some city lots in Pensacola; that certain deeds in connection therewith had been sent to her in Delaware, one of them proving to be a quitclaim deed, and upon investigation and inquiry it was found that the property in this deed was a portion of the property in litigation in the suit of *Florida McGuire v. Pensacola City Company et al.*, and that thereupon, and by his advice, the said deed was returned to the proposed grantors, with the statement that no further negotiations whatever could be conducted by them in relation to this property, and they thereupon refused to purchase, either at the present time or in the future, any portion of the said tract.

"W. A. Blount, an attorney and counselor of this court, and practicing therein, and as amicus curiæ, moves the court to cite Simeon Belden, Louis Paquet, and E. T. Davis, attorneys and counselors of this court, to show cause before this court, at a day and hour to be fixed by the court, why they should not be punished for contempt of this court in causing and procuring, as attorneys of the circuit court of Escambia County, Fla., a summons in ejectment, wherein *Florida McGuire* was plaintiff and the Hon. Charles Swayne was defendant, to be issued from said court and served upon the said judge of this court to recover the possession of block 91, Cheveaux tract, in the city of Pensacola, Fla., a tract of land involved in a controversy in ejectment then depending in this court in a case wherein the said *Florida McGuire* was plaintiff and the *Pensacola City Company et al.* were defendants, upon the grounds:

"1. That the said suit in ejectment against the judge of this court was instituted after a petition to this judge to recuse himself in the said case of *Florida McGuire v. Pensacola City Company et al.* had been submitted to the court on November 5, 1901, and denied, and after the said judge had said in open court and in the presence of

the said counselors, Simeon Belden and Louis Paquet, that the allegation of the said petition that he or some member of his family were interested in or owned property in said tract was untrue, and had stated that he had refused to permit a member of his family to buy land in said tract because the said suit by Florida McGuire, involving the title to the said tract, was in litigation before him, the said judge.

"2. That after the said declaration of the said judge the said counsel were aware that neither the said judge nor any member of his family were the owners of or interested in any part whatever of the said tract and had no reason to believe that he or they were so interested, and knew or could easily have known that the said block was not in the possession or control of anyone, but was entirely unoccupied.

"3. That the said suit against the said judge was instituted on Saturday night, the 9th instant, after 6 o'clock, and after the court had overruled the motion of said attorneys to postpone the trial of the said case of Florida McGuire v. Pensacola City Company et al. for a week or more, and after the said judge had announced to the said counsel that he would call the case for trial on Monday, November 11, 1901, and would then try the case, unless counsel for plaintiff made a showing why he should not so try, and the said counsel had announced that they would make such showing.

"4. That the said E. T. Davis was, before the instituting of the said suit against the said judge, cognizant of all the facts herein set forth.

"(Indorsements: In re contempt proceedings Simeon Belden, E. T. Davis, and Louis Paquet. Filed November 11, 1901. F. W. Marsh, clerk.)

"Marshal's return: United States of America, northern district of Florida, ss. I hereby certify that I served the annexed citation on the therein-named Simeon Belden and E. T. Davis, the within-named Louis Paquet not found, being outside the northern district of Florida, by handing to and leaving a true and correct copy thereof with Simeon Belden and E. T. Davis personally at Pensacola, Escambia County, in said district, on the 11th day of November, A. D. 1901. T. F. McGourin, United States marshal, by R. P. Wharton, deputy.)"

And afterwards, to wit, on the 12th day of November, A. D. 1901, the following answer was made and entered in the said cause by the said defendants therein, to wit:

"Before the Hon. Charles Swayne, judge circuit court United States, northern district of Florida. In re matter of contempt proceedings against Simeon Belden, Louis Paquet, and E. T. Davis.

"And now comes Simeon Belden and E. T. Davis, and for reasons why they should not be punished by contempt sheweth:

"First. That the grounds upon which the said contempt is based, to wit, summons in ejectment issued from the circuit court of Escambia County, Fla., wherein Florida McGuire was plaintiff and the Hon. Charles Swayne was defendant, that said proceeding is in the jurisdiction of the circuit court of Escambia County, Fla., and that this court is without jurisdiction thereof.

"Second. That the petition to recuse referred to in said motion they had nothing to do with before this court, nor were they present on the 5th day of November when submitted, as stated in said motion, nor present when any statement made by the judge concerning his connection with any of the property, except the statement made by said judge on November 11, after court convened and after the motion to discontinue the case of Florida McGuire v. Pensacola City Company et al. was made.

"Third. To the second paragraph sheweth: As above stated, they heard no declaration made by the judge referred to in said paragraph, and as for reasons to believe that he, Judge Swayne, or some member of his family, was interested in block 91, Rivas tract of land, named in said summons, we simply refer to the declaration made by Hon. Charles Swayne on November 11, 1901, when said motion was made by the Hon. W. A. Blount, and that after hearing said declaration, believe that there is in existence a deed to Mrs. Charles Swayne, uncanceled, and that they have no knowledge of its repudiation, and as the negotiation for the property named in said deed was one made by Mrs. Charles Swayne in her individual right, that no act of the said Hon. Charles Swayne would repudiate or render null and void any transaction made by Mrs. Charles Swayne with her own money or property.

"Fourth. That E. T. Davis for himself sheweth: That this court had no jurisdiction over him in said matter of Florida McGuire v. Pensacola City Company et al. until he requested the court to mark his name as attorney for plaintiff on the morning of November 11, when he presented the motion to discontinue the aforesaid suit.

"SIMEON BELDEN.
"E. T. DAVIS.

"(Endorsements: Before the Honorable Charles Swayne, judge of the circuit court of the United States for the northern district of Florida, at Pensacola. In re contempt against Simeon Belden, Louis Paquet, and E. T. Davis. Filed November 12th, 1901. F. W. Marsh, clerk.)"

And afterwards, to wit, on the same day, November 12, 1901, the following proceedings were had in open court, to wit:

"The United States v. E. T. Davis. No. 251. Contempt of court.

"This cause coming on to be heard on the motion of W. A. Blount, attorney and counselor at law of this court, as amicus curiæ, to cite the said Ezra T. Davis to show cause why he should not be punished for contempt of this court for the reasons in said motion distinctly alleged, and on the rule granted on said motion, dated November 11, 1901, a certified copy of which has been duly served on E. T. Davis, and on the answer to said rule on this day read and filed in open court by and on behalf of the said Ezra T. Davis, and after hearing the testimony of the witnesses introduced by the United States and by the said defendant, and after duly considering the same, "It is now ordered and adjudged that the said Ezra T. Davis is guilty in manner and form as in said motion and rule set forth of the facts therein alleged. And it is further adjudged that the same constitutes a substantial contempt of the dignity and good order of this court.

"Wherefore it is ordered and adjudged that the said Ezra T. Davis do pay a fine or penalty to the United States Government of \$100, and that he be taken hence to the county jail of Escambia County, Fla., at Pensacola, and there confined for and during the term and period of ten days from the 12th day of November, 1901, and that he stand committed until the terms of this sentence be complied with, or until he be discharged by due course of law.

"Ordered and done this 12th day of November, A. D. 1901.

"CHAS. SWAYNE, Judge.

("Endorsed: United States v. Ezra T. Davis. Sentence. Filed November 12th, 1901. F. W. Marsh, clerk.")

And afterwards and on the same day, to wit, on the 12th day of November, A. D. 1901, in pursuance of the term of the foregoing sentence, there issued out of the clerk's office of the said court a warrant of sentence of the said defendant, directed to the marshal of the said district, which was thereupon delivered to him and was by him executed and returned into the said clerk's office, with his return indorsed thereon, which writ, together with the said return, is in the words and figures following, to wit:

"United States of America, circuit court of the United States, fifth circuit, northern district of Florida.

"*The President of the United States to the marshal of the United States for the northern district of Florida, greeting:*

"Whereas at a session of the circuit court of the United States for the fifth circuit and northern district of Florida, held at the city of Pensacola, in said circuit and district, on the 11th day of November, A. D. 1901, a rule to show cause why he should not be punished for contempt of the said court was duly made and entered by the said court against Ezra T. Davis for causing and procuring, as attorney of the circuit court of Escambia County, Fla., a summons in ejectment, wherein Florida McGuire was plaintiff and the Hon. Charles Swayne was defendant, to be issued from the said court and served upon the said judge of this court, to recover the possession of block 91, Cheveaux tract, in the city of Pensacola, Fla., a tract of land involving a controversy in ejectment then pending in the said circuit court of the United States in a case wherein the said Florida McGuire was plaintiff and the Pensacola City Company and others were defendants, upon the grounds:

"1. That the said suit in ejectment against the judge of this court was instituted after a petition to this judge to recuse himself in the case of Florida McGuire v. the Pensacola City Company and others had been submitted to the court on November 5, 1901, and denied, and after the said judge had said in open court and in the presence of the said ——— that the allegation of the said petition that he or some member of his family were interested in or owned property in said tract was untrue, and had stated that he had refused to permit a member of his family to buy land in said tract, because the said suit by Florida McGuire, involving the title to the said tract, was in litigation before him, the said judge.

"2. That after the said declaration of the said judge the said counsel were aware that neither the said judge nor any member of his family were the owners of or interested in any part whatever of the said tract, and had no reason to believe that he or they were so interested, and knew or could easily have known that the said block was not in the possession or control of anyone, but was entirely unoccupied.

"3. That the said suit was instituted against the said judge on Saturday night, the 9th instant, after 6 o'clock, and after the court had overruled the motion of said attorneys to postpone the trial of the said cause of *Florida McGuire v. Pensacola City Company* and others, for a week or more, and after the said judge had announced to the counsel aforesaid that he would call the case for trial on Monday, November 11, 1901, and would then try the case, unless counsel for plaintiff made a showing why he should not so try, and the said counsel had announced that they would make such showing.

"4. That the said E. T. Davis was, before the institution of the said suit against the said judge, cognizant of all the facts herein set forth.

"Which charges were in violation of the dignity and good order of the said court and a contempt thereof.

"And afterwards, to wit, on the 12th day of November, A. D. 1901, the said defendant having been duly served with an order to show cause why he should not be punished for the alleged contempt aforesaid, which order was returnable at said time, was duly tried by the court upon his answer and the evidence of witnesses on the charges aforesaid in the said rule preferred, and a verdict of guilty was duly rendered by the said court against the said defendant, Ezra T. Davis.

"And afterwards, on the same day, our said court, by reason of the verdict aforesaid of the said court, did duly sentence the said Ezra T. Davis to be imprisoned in the county jail of Escambia County, in the State of Florida, for and during the term and period of ten days from the 12th day of November, A. D. 1901, and further to pay a fine or penalty to the United States Government of \$100, and that he stand committed until the terms of said sentence be complied with, or until he be discharged by due course of law.

"The said jail being the place duly selected for the imprisonment of persons convicted of offenses against the laws of the United States in the courts thereof, in said northern district of Florida.

"Now, therefore, you, the said marshal, are hereby commanded to convey to the said jail at Pensacola, in the State of Florida, the body of the said Ezra T. Davis, and deliver him to the keeper thereof.

"And you, the said keeper, in the name of the President of the United States of America, are hereby commanded to receive the body of the said Ezra T. Davis, the person aforesaid, into your custody, and him, the said Ezra T. Davis, keep in the said jail of Escambia County, in the State of Florida, at Pensacola, for the full term and period of ten days from the 12th day of November, 1901, and until the said fine of \$100 be paid, or until he be discharged by due course of law.

"Herein fail not at your peril. And make due return of what you shall do in the premises and of this writ.

"Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the seal of this court at the city of Pensacola, in said district, this 12th day of November, A. D. 1901.

[SEAL.]

F. W. MARSH, Clerk.

"(Indorsements.—No. 251. *United States v. Ezra T. Davis*. Warrant of sentence. Filed November 12, 1901. F. W. Marsh, clerk.)

"(Marshal's return.—Received the within warrant of sentence, together with the body of the within-named prisoner, Ezra T. Davis, at Pensacola, Fla., on the 12th November, 1901, and executed the same by delivering the body of the said prisoner to the keeper of the jail of Escambia County, Fla., at Pensacola, on the 12th day of November, 1901, together with a certified copy of the warrant of sentence.)

"T. F. MCGOURIN,

"*United States Marshal.*

"By R. P. WHARTON,

"*Deputy United States Marshal.*

"United States fifth judicial circuit. Proceedings before Don A. Pardee, circuit judge, in chambers, New Orleans, La. Ex parte Ezra T. Davis, ex parte Simeon Belden. On writs of habeas corpus.

"Writs of habeas corpus in favor of the above-named relators having issued on the order of the undersigned circuit judge, returnable in chambers in the city of

New Orleans, and returns having been made to the said writs, and the issue presented having been argued—

"It is now, for the reasons herewith filed, ordered and adjudged that the said writs be discharged and that the relators be remanded to the custody of the jail keeper of Escambia County, Fla., holding for the marshal for the northern district of Florida, at Pensacola.

"And the said relators, pending proceedings on above-mentioned writs, have been enlarged upon bonds conditioned upon their appearance and to obey orders issued.

"It is ordered that they surrender themselves to said jailer, or said marshal, on or before noon of Monday, the 9th day of December, 1901.

"The costs of these proceedings to be paid by said relators.

"December 7, 1901.

"DON A. PARDEE, *Circuit Judge.*"

UNITED STATES OF AMERICA,

Northern District of Florida:

I, F. W. Marsh, clerk of the circuit court of the United States for the northern district of Florida, hereby certify that the foregoing printed pages, numbered from 1 to 6, inclusive, contain a full, true, and complete transcript of the record and proceedings in the matter of the rule upon E. T. Davis, to show cause why he should not be punished for a contempt of said court, as the same remains of record and on file in said court.

Witness my hand and the seal of said court, at the city of Pensacola, in said district, this 28th day of January, A. D. 1905.

[SEAL.]

F. W. MARSH, *Clerk.*

Mr. Manager DE ARMOND. Mr. President, I now offer in evidence the record in the case against Simeon Belden. I will say to the court that articles 8, 9, 10, and 11 relate to the same transactions—the proceedings as for a contempt against Elza T. Davis and Simeon Belden.

The PRESIDING OFFICER. Do the managers desire to have the record read?

Mr. Manager DE ARMOND. I do not care to have it read unless the court does.

The PRESIDING OFFICER. Does any Senator desire the record to be read?

Mr. BACON. Mr. President, I do not desire that the time of the court shall be unnecessarily consumed. I shall be perfectly content if we may be put in possession of the nature of the document, so that we can carry the connection with us.

Mr. Manager DE ARMOND. Mr. President, I would say that, except as to the names, this is the same document as that a portion of which has already been read and which has been ordered to be inserted in full in the Record.

The PRESIDING OFFICER. The Presiding Officer understands that the record which is now offered is in the contempt case against Simeon Belden.

Mr. Manager DE ARMOND. The Belden case; yes, sir.

The PRESIDING OFFICER. And that it is substantially in form the same as has been read in the case of the contempt of Davis.

Mr. Manager DE ARMOND. That is true.

Mr. PETTUS. Mr. President, would it not be well to read the sentence by the court?

The PRESIDING OFFICER. The part of the transcript which relates to the sentence by the court will be read.

The Secretary read the sentence pronounced by the court, which appears below in the complete record.

Mr. Manager DE ARMOND. Perhaps the commitment might as well be read in one of the cases.

The Secretary read the commitment, which appears in the complete record; which is as follows:

In the circuit court of the United States, northern district of Florida. The United States v. Simeon Belden.

Be it remembered that on the 11th day of November, A. D. 1901, at a term of the United States circuit court in and for the northern district of Florida, the following motion was made in open court and entered of record, to wit:

And now comes W. A. Blount, an attorney and counsellor at law of this court, and practicing therein, and as amicus curiae, and moves the court to cite Simeon Belden, Louis Paquet, and E. T. Davis, attorneys and counsellor of this court, to show cause before this court, at a day and hour to be fixed by the court, why they shall not be punished for contempt of the court in causing and procuring, as attorneys of the circuit court of Escambia County, Fla., a summons in ejectment, wherein Florida McGuire is plaintiff and the Hon. Charles Swayne is defendant, to be issued from said court and served upon the judge of this court, to recover the possession of block 91 in the Cheveaux tract, in the city of Pensacola, Fla., a tract of land involved in a controversy in ejectment then pending in this court in a case wherein the said Florida McGuire was plaintiff and the Pensacola City Company et al. were defendants, upon the grounds:

1. That the said suit in ejectment against the judge of this court was instituted after a petition to this judge to recuse himself in the said case of Mrs. Florida McGuire v. Pensacola City Company et al. had been submitted to the court on November 5, 1901, and denied, and after the said judge had stated in open court and in the presence of the said counsel, Simeon Belden and Louis Paquet, that an allegation of the said petition, that he or some member of his family were interested in or owned property in said tract, was untrue, and had stated that he had refused to permit a member of his family to buy land in said tract because the said suit of Florida McGuire, involving the title to the said tract, was in litigation before him, the said judge.

2. That after the said declaration of the said judge, the said counsel were aware that neither the said judge, nor any member of his family, were the owners of or interested in any part of the said tract, and had no reason whatever to believe that he or they were so interested, and knew, or could easily have known, that the said block was not in the possession or control of anyone, but was entirely unoccupied.

3. That the said suit against the said judge was instituted on Saturday night, the 9th instant, after 6 o'clock, and after the court had overruled the motion of the said attorneys to postpone the trial of the case of Florida McGuire v. Pensacola City Company et al. for a week or more, and after the said judge had announced to the said counsel that he would call the case for trial on Monday, November 11, 1901, and would then try the case, unless counsel for plaintiff made a showing why he should not so try, and the said counsel had announced that they would make such showing.

4. That the said E. T. Davis was, before the instituting of the said suit against the said judge, cognizant of all the facts herein set forth.

W. A. BLOUNT, *An Attorney of this Court.*

NOVEMBER 11, 1901.

And afterwards, and on the same day, to wit, on the 11th day of November, A. D. 1901, the following order was made and entered of record in the said cause, to wit:

"In re matter of contempt proceedings against Simeon Belden, Louis Paquet, and E. T. Davis.

"Upon reading the motion of W. A. Blount, an attorney and counselor of this court, for a citation to Simeon Belden, Louis Paquet, and E. T. Davis, why they should not be committed for contempt, for the reasons set forth in said motion, and after consideration of the same, it is ordered:

"That the said Simeon Belden, Louis Paquet, and E. T. Davis be, and they are hereby, cited to appear before me, Charles Swayne, judge of this court, at 10 o'clock a. m. on Tuesday, November 12, 1901, to show cause why they should not be punished for contempt upon the grounds and for the reasons set forth in the said motion, which is now of record in the records of said court, and a copy of which is to be attached by the clerk to the copy of this order served upon the said Simeon Belden, Louis Paquet, and E. T. Davis.

"Ordered in open court this 11th day of November, A. D. 1901.

"CHARLES SWAYNE, *Judge.*"

At the time of the presentation of the said motion by the said W. A. Blount, in open court, on November 11, 1901, the said Simeon Belden and the said E. T. Davis were present in the said court, and before making said order the said judge made and directed to be spread upon the minutes the following declaration concerning his connection with the land in the Cheveaux tract, mentioned in said motion, to wit:

"On Tuesday, November 5, 1901, at the time of the presentation of the said motion by plaintiffs, that the court recuse himself, he had then stated, and now states, that he never agreed to accept, nor ever accepted any deed to any portion of the said Cheveaux tract; that, as he stated, a member of his family, to wit, his wife, had, with money inherited by her from her father's estate, negotiated for the purchase of some city lots in Pensacola; that certain deeds in connection therewith had been sent to her in Delaware, one of them proving to be a quitclaim deed, and upon investigation and inquiry it was found that the property in this deed was a portion of the property in litigation in the suit of Florida McGuire v. Pensacola City Company et al., and that thereupon, and by his advice, the said deed was returned to the proposed grantors with the statement that no further negotiations whatever could be conducted by them in relation to this property, and they thereupon refused to purchase, either at the present time or in the future, any portion of the said tract."

W. A. Blount, an attorney and counselor at law of this court and practicing therein, and as amicus curiæ, moves the court to cite Simeon Belden, Louis Paquet, and E. T. Davis, attorneys and counselors of this court, to show cause before this court, at a day and hour to be fixed by the court, why they should not be punished for contempt of this court, in causing and procuring, as attorneys of the circuit court of Escambia County, Fla., a summons in ejectment, wherein Florida McGuire was plaintiff and the Hon. Charles Swayne was defendant, to be issued from said court and served upon the said judge of this court, to recover the possession of block 91, Cheveaux tract, in the city of Pensacola, Fla., a tract of land involved in a controversy in ejectment then depending in this court in a case wherein the said Florida McGuire was plaintiff and the Pensacola City Company et al. were defendants, upon the grounds:

1. That the said suit in ejectment against the judge of this court was instituted after a petition to this judge to recuse himself in the said case of Florida McGuire v. Pensacola City Company et al. had been submitted to the court, on November 5, 1901, and denied, and after the said judge had said in open court, and in the presence of the said counselors Simeon Belden and Louis Paquet, that the allegation of the said petition that he or some member of his family were interested in or owned property in said tract was untrue, and had stated that he had refused to permit a member of his family to buy land in said tract because the said suit by Florida McGuire involving the title to the said tract was in litigation before him, the said judge.

2. That after the said declaration of the said judge, the said counsel were aware that neither the said judge nor any member of his family were the owners of or interested in any part whatever of the said tract and had no reason to believe that he or they were so interested, and knew, or could easily have known, that the said block was not in the possession or control of anyone, but was entirely unoccupied.

3. That the said suit against the said judge was instituted on Saturday night, the 9th instant, after 6 o'clock, and after the court had overruled the motion of said attorneys to postpone the trial of the said case of Florida McGuire v. Pensacola City Company et al. for a week or more, and after the said judge had announced to the said counsel that he would call the case for trial on Monday, November 11, 1901, and would then try the case, unless counsel for plaintiff made a showing why he should not so try, and the said counsel had announced that they would make such showing.

4. That the said E. T. Davis was, before the instituting of the said suit against the said judge, cognizant of all of the facts herein set forth.

(Indorsements: In re contempt proceeding Simeon Belden, E. T. Davis, and Louis Paquet. Filed November 11, 1901. F. W. Marsh, clerk.)

(Marshal's return: United States of America, northern district of Florida, ss: I hereby certify that I served the annexed citation on the therein named Simeon Belden and E. T. Davis, the within named Louis Paquet not found, being outside the northern district of Florida, by handing to and leaving a true and correct copy thereof with Simeon Belden and E. T. Davis, personally, at Pensacola, Escambia County, in said district, on the 11th day of November, A. D. 1901. T. F. McGourin, United States marshal, by R. P. Wharton, deputy.)

And thereafter, to wit, on the 12th day of November, A. D. 1901, the following answer was made and entered in the said cause by the said defendants therein, to wit:

"Before the Hon. Charles Swayne, judge circuit court United States, northern district of Florida. In re matter of contempt proceedings against Simeon Belden, Louis Paquet, and E. T. Davis.

"And now comes Simeon Belden and E. T. Davis, and for reasons why they should not be punished by contempt sheweth:

"First. That the grounds upon which the said contempt is based, to wit, summons in ejectment issued from the circuit court of Escambia County, Fla., wherein Florida McGuire was plaintiff and the Hon. Charles Swayne was defendant, that said proceedings is in the jurisdiction of the circuit court of Escambia County, Fla., and that this court is without jurisdiction thereof.

"Second. That the petition to recuse referred to in said motion they had nothing to do with before this court, nor were they present on the 5th day of November when submitted, as stated in said motion, nor present when any statement made by the judge concerning his connection with any of the property except the statement made by said judge on November 11 after court convened and after the motion to discontinue the case of Florida McGuire v. Pensacola City Company et al. was made.

"Third. To the second paragraph sheweth: As above stated, they heard no declaration made by the judge referred to in said paragraph, and as for reasons to believe that he, Judge Swayne, or some member of his family, was interested in block 91, Rivas tract of land named in said summons, we simply refer to the declaration made by Hon. Charles Swayne on November 11, 1901, when said motion was made by the Hon. W. A. Blount, and that after hearing said declaration, believe there is in existence a deed to Mrs. Charles Swayne uncanceled, and that they have no knowledge of its repudiation, and as the negotiations for the property named in said deed was one made by Mrs. Charles Swayne in her individual right, that no act of the said Hon. Charles Swayne would repudiate or render null and void any transaction made by Mrs. Charles Swayne with her own money or property.

"Fourth. That E. T. Davis, for himself, sheweth: That this court had no jurisdiction over him in said matter of Florida McGuire v. Pensacola City Company et al. until he requested the court to mark his name as attorney for plaintiff on the morning of November 11, when he presented the motion to discontinue the aforesaid suit.

"SIMEON BELDEN.

"E. T. DAVIS."

"(Indorsements: Before the honorable Charles Swayne, judge of the circuit court of the United States for the northern district of Florida, at Pensacola. In re contempt against Simeon Belden, Louis Paquet, and E. T. Davis. Filed November 12, 1901. F. W. Marsh, clerk.)"

And afterwards, to wit, on the same day, November 12, 1901, the following proceedings were had in open court, to wit:

"The United States v. Simeon Belden. No. 249. Contempt of court.

"This cause coming on to be heard on the motion of W. A. Blount, attorney and counselor at law of this court, as amicus curiae, to cite the said Simeon Belden to show cause why he should not be punished for contempt of this court for the reasons in said motion distinctly alleged, and on the rule granted on said motion, dated November 11, 1901, a certified copy of which has been duly served on said Simeon Belden, and on the answer to said rule on this day read and filed in open court by and on behalf of the said Simeon Belden; and after having the testimony of the witnesses introduced by the United States and by the said defendant, and after duly considering the same,

"It is now ordered and adjudged that the said Simeon Belden is guilty in manner and form as in said motion and rule set forth of the facts therein alleged; and it is further adjudged that the same constitutes a substantial contempt of the dignity and good order of this court.

"Wherefore, it is ordered and adjudged that the said Simeon Belden do pay a fine or penalty to the United States Government of \$100, and that he be taken hence to the county jail of Escambia County, Fla., at Pensacola, and there confined for and during the term and period of ten days from the 12th day of November, 1901, and

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that he stand committed until the terms of this sentence be complied with or until he be discharged by due course of law.

"Ordered and done this 12th day of November, A. D. 1901.

"CHAS. SWAYNE, Judge.

"(Indorsements: United States v. Simeon Belden. Sentence. Filed November 12, 1901. F. W. Marsh, clerk.)"

And afterwards, and on the same day, to wit, on the 12th day of November, A. D. 1901, in pursuance of the terms of the foregoing sentence, there issued out of the clerk's office of the said court a warrant of sentence of the said defendant, directed to the marshal of said district, which was thereupon delivered to him and was by him executed and returned into the said clerk's office with his return indorsed thereon, which writ, together with the said return, is in the words and figures following, to wit:

"United States of America, circuit court of the United States, fifth circuit, northern district of Florida.

"*The President of the United States to the marshal of the United States for the northern district of Florida, greeting:*

"Whereas, at a session of the circuit court of the United States for the fifth circuit and northern district of Florida, held at the city of Pensacola, in said circuit and district, on the 11th day of November, A. D. 1901, a rule to show cause why he should not be punished for contempt of the said court was duly made and entered by the said court against Simeon Belden for causing and procuring, as attorneys of the circuit court of Escambia County, Fla., a summons in ejectment, wherein Florida McGuire was plaintiff and the honorable Charles Swaine was defendant, to be issued from the said court and served upon the said judge of this court, to recover the possession of block 91, Cheveaux tract, in the city of Pensacola, Fla., a tract of land involving a controversy in ejectment then depending in the said circuit court of the United States in a case wherein the said Florida McGuire was plaintiff and the Pensacola City Company and others were defendants, upon the grounds:

"1. That the said suit in ejectment against the judge of this court was instituted after a petition to this judge to recuse himself in the said case of Florida McGuire v. Pensacola City Company and others had been submitted to the court on November 5, 1901, and denied, and after the said judge had said in open court and in the presence of the said Simeon Belden that the allegation of the said petition that he or some member of his family were interested in or owned property in said tract was untrue, and had stated that he had refused to permit a member of his family to buy land in said tract because the said suit by Florida McGuire, involving the title to said tract, was in litigation before him, the said judge.

"2. That after the said declaration of the said judge the said counsel were aware that neither the said judge nor any member of his family were the owners of or interested in any part whatever of the said tract, and had no reason to believe that he or they were so interested, and knew, or could easily have known, that the said block was not in the possession or control of anyone, but was entirely unoccupied.

"3. That the said suit was instituted against the said judge on Saturday night, the 9th instant, after 6 o'clock, and after the court had overruled the motion of said attorneys to postpone the trial of the said cause of Florida McGuire v. Pensacola City Company and others for a week or more, and after the said judge had announced to the counsel aforesaid that he would call the case for trial on Monday, November 11, 1901, and would then try the case, unless counsel for plaintiff made a showing why he should not so try, and the said counsel had announced that they would make such showing.

"4. That the said E. T. Davis was, before the institution of the said suit against the said judge, cognizant of all the facts herein set forth.

"Which charges were in violation of the dignity and good order of the said court, and a contempt thereof.

"And afterwards, to wit, on the 12th day of November, A. D. 1901, the said defendant, having been duly served with an order to show cause why he should not be punished for the alleged contempt aforesaid, which order was returnable at said time, was duly tried by the court upon his answer and the evidence of witnesses on the charges aforesaid in the said rule preferred, and a verdict of guilty was duly rendered by the said court against the said defendant, Simeon Belden.

"And afterwards, on the same day, our said court, by reason of the verdict aforesaid of the said court, did duly sentence the said Simeon Belden to be imprisoned in

the county jail of Escambia County, in the State of Florida, for and during the term and period of ten days from the 12th day of November, A. D. 1901, and further to pay a fine or penalty to the United States Government of \$100, and that he stand committed until the terms of said sentence be complied with, or until he be discharged by due course of law, the said jail being the place duly selected for the imprisonment of persons convicted of offenses against the laws of the United States in the courts thereof in said northern district of Florida.

"Now, therefore, you, the said marshal, are hereby commanded forthwith to convey to the said jail at Pensacola, in the State of Florida, the body of the said Simeon Belden and deliver him to the keeper thereof.

"And you, the said keeper, in the name of the President of the United States of America, are hereby commanded to receive the body of the said Simeon Belden, the person aforesaid, into your custody, and him, the said Simeon Belden, keep in the said jail of Escambia County, in the State of Florida, at Pensacola, for the full term and period of ten days from the 12th day of November, 1901, and until the said fine of \$100 be paid, or until he be discharged by due course of law.

"Witness, the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the seal of this court, at the city of Pensacola, in said district, this 12th day of November, A. D. 1901.

"[SEAL.]

"F. W. MARSH, *Clerk.*

"(Indorsements: No. 249. The United States v. Simeon Belden. Warrant of sentence. Filed November 12, 1901. F. W. Marsh, clerk.)

'Marshal's return: Received the within warrant of sentence, together with the body of the within-named prisoner, Simeon Belden, at Pensacola, Fla., on the 12th day of November, 1901, and executed the same by delivering the body of the said prisoner to the keeper of the jail of Escambia County, Fla., at Pensacola, on the 12th day of November, 1901, together with a certified copy of the warrant of sentence.

"T. F. MCGOURIN,

United States Marshal.

"United States, fifth judicial circuit. Proceedings before Don. A. Pardee, circuit judge, in chambers, New Orleans, La. Ex parte Elsa T. Davis, ex parte Simeon Belden. On writs of habeas corpus.

"Writs of habeas corpus in favor of the above-named relators having issued on the order of the undersigned circuit judge, returnable in chambers, in the city of New Orleans, and returns having been made to the said writs, and the issues presented having been argued,

"It is now, for the reasons herewith filed, ordered and adjudged that the said writs be discharged and that the relators be remanded to the custody of the jail keeper of Escambia County, Fla., holding for the marshal for the northern district of Florida, at Pensacola.

"And the said relators, pending proceedings on above-mentioned writs, have been enlarged upon bonds conditioned for their appearance and to obey orders issued.

"It is ordered that they surrender themselves to said jailer or said marshal on or before noon of Monday, the 9th day of December, 1901.

"The costs of these proceedings to be paid by said relators.

"DON. A. PARDEE, *Circuit Judge.*

"DECEMBER 7, 1901."

UNITED STATES OF AMERICA,

Northern district of Florida:

I, F. W. Marsh, clerk of the circuit court of the United States for the northern district of Florida, hereby certify that the foregoing printed pages, numbered from 1 to 6, both inclusive, constitutes a full, complete, and true transcript of the record and proceedings in the matter of the rule upon Simeon Belden to show cause why he should not be punished for a contempt of said court, as the same remains of record and on file in said court.

Witness my hand and the seal of said court at the city of Pensacola, in said district, this 28th day of January, A. D. 1905.

"[SEAL.]

F. W. MARSH, *Clerk.*

ELZA T. DAVIS recalled.

By Mr. Manager DE ARMOND:

Q. Mr. Davis, you are the E. T. Davis mentioned in these contempt proceedings?—A. Yes, sir.

Q. You have already been on the stand, and have stated that you are an attorney at law and live in Pensacola, Fla.?—A. Yes, sir.

Q. Were you one of the attorneys in the suit in the State court of Florida *McGuire et al. v. Charles Swayne*?—A. Yes, sir.

Q. When were you retained in that case?—A. It was on Saturday evening, about 7 o'clock, I suppose, of November 9, 1901.

Q. The evening of the bringing of that suit?—A. Yes, sir.

Q. Had you been or were you then an attorney in the case of Florida *McGuire et al. v. The Pensacola Land Company et al.*?—A. I was not.

Q. In Judge Swayne's court?—A. I was not.

Q. When did you first become connected with that case in the United States court?—A. On Sunday Mr. Paquet rang me up at the hotel and asked me to come down to the office. I went down to the office, and he showed me a telegram he had received from his wife, stating that some of his family were sick—I do not remember which ones—and to come home on the first train. He asked me if I would appear in the court the next morning and discontinue the case before the court, which I agreed to do.

Q. Was that your first connection with the case?—A. Yes, sir.

Q. What did you do in that case?—A. Nothing more than to prepare the motion, and on Monday morning I asked the court to mark my name as counsel for the plaintiffs, and stated that Mr. Paquet had been called home, and that owing to General Belden's physical condition I would withdraw the case as a matter of courtesy to the attorneys.

Q. What action was taken? Was the case accordingly dismissed?—A. Yes, sir.

Q. What next transpired there, so far as you were concerned?—

A. Mr. Blount rose and made a motion that the three attorneys be punished for contempt of court.

Q. Which Mr. Blount? What is his first name?—A. W. A. Blount.

Q. What was his connection with the Florida McGuire case?—A. He was a defendant and also attorney for himself and the other defendants.

Q. State to the court what transpired there. What was said by the judge and by Mr. Blount, and what was done?—A. I do not remember all that was said at the time. Judge Swayne appointed Mr. Blount and William Fisher to prepare the motion.

Q. Who is William Fisher?—A. He is also an attorney and was one of the defendants in the case.

Q. The case that had just been dismissed?—A. Yes, sir.

Q. Do you know when that motion was filed? Was it prepared in writing and filed?—A. I do not think it was immediately; some time during the morning.

Q. What next transpired, so far as you were concerned?—A. We were served with a rule to show cause why we should not be punished for contempt, and we then prepared our answer, the answer which has been read here.

Q. When did you next appear before the court?—A. Tuesday, November 12.

Q. And then you filed your answer?—A. Yes, sir.

Q. State to the court whether or not any testimony was taken.—A. There was some testimony taken concerning an article which had been published in the paper, and also Mr. Keyser was called to the witness stand. I do not remember just what his testimony was; something, though, concerning who paid his fare on going on a certain trip to Tallahassee or somewhere else connected with the case.

Q. Was there any further testimony?—A. I called Mr. Blount and Mr. Fisher to prove their connection with the case and that they were parties interested in the case.

Q. In the Florida McGuire case?—A. Yes, sir.

Q. Was that all the testimony?—A. Yes, sir; that was all.

Q. State to the court whether or not the matter was argued before Judge Swayne.—A. It was.

Q. You have heard read here section 725 of the Revised Statutes, have you not?—A. Yes, sir.

Q. State to the court whether or not you called the attention of Judge Swayne to that provision of law?—A. I read from the American and English Encyclopedia of Law, in which was included that statute which had been cited; that statute there, and the other authorities which I read touching upon the jurisdiction of the court.

Q. State to the court how your discussion of the matter terminated.—A. After reading that I then started to read from volume 167 of the United States Supreme Court Reports, and Judge Swayne's reply was, "That does not apply to this case."

Q. Was that on the subject of contempts?—A. Yes, sir, and jurisdiction.

Q. And jurisdiction. What was Judge Swayne's comment?—A. That was the remark he made. I then laid the book down and took my seat.

Q. I did not understand the remark. What remark was it he made?—A. That that law did not apply to this case.

Q. What was done then?—A. He then proceeded to pass sentence upon us.

Q. What was his sentence?

Mr. HIGGINS. Is not that a matter of record?

Mr. Manager DE ARMOND. Part of it is and part of it was eliminated from the record. [To the witness.] What was the sentence which Judge Swayne pronounced upon you and upon Mr. Belden?

A. Before passing the sentence he abused us very much; stated that we had been guilty of crooked work, and that we had brought the law, the highest calling of the land, into disgrace, and that our acts—

Mr. Manager DE ARMOND. A little louder. The members of the court back here do not hear you. Please repeat the statement.

The WITNESS. He stated that we had been guilty of crooked work; we had brought the law, the highest calling of the land, into disgrace, and that our acts were a stench in the nostrils of the people.

Q. (By Mr. Manager DE ARMOND.) What was his manner?—A. His manner was very abusive; in fact, it was almost fiendish.

Q. State whether or not the court gave evidence of being angry.—A. Very angry; yes, sir.

Q. State to the court the condition of Mr. Belden at that time.—A. Mr. Belden had previously had a stroke of paralysis, and he was in a very feeble condition. One side of his face had contracted; the other had relaxed and had drawn his mouth around to one side. He was

very feeble physically, otherwise, and could hardly speak above a whisper.

Q. Is he a young man or an aged man?—A. A very aged man.

Q. What was the sentence that Judge Swayne pronounced upon you and upon Mr. Belden?—A. His first sentence—

Q. That is what I am asking about.—A. Was ten days' imprisonment, a hundred dollars fine, and two years' disbarment.

Q. For each of you?—A. Yes, sir. Mr. W. A. Blount immediately upon the conclusion of the sentence stepped to the bench and, as I understood him, said, "You can not disbar under a proceeding of this kind;" and he then withdrew that part of the sentence.

Q. What was done to you and General Belden then?—A. We were taken to jail.

Q. How soon after the conclusion of the sentence?—A. Immediately afterwards.

Q. What was done with you when you were taken there?—A. We were first placed in a cell.

Q. How long was the court occupied in this proceeding of disposing of the contempt matter and getting you off to jail?—A. I think about an hour; perhaps a little more.

Q. Were you detained there until the commitment was made out, as far as you observed?—A. No, sir.

Q. How long were you in prison?—A. We remained there about three days. We sued out the writ of habeas corpus and came out on bond. That was heard in New Orleans, and Judge Pardee refused jurisdiction and requested us to report to the sheriff or to the jailer and either to pay the fines or suffer the remainder of the imprisonment.

Q. What did you gentlemen do?—A. I reported. I paid a hundred dollars, and General Belden served the remainder of his time.

Q. How long had you lived in Pensacola when these proceedings took place?—A. A little over a year.

Mr. Manager DE ARMOND. Cross-examine, gentlemen.

Cross-examined by Mr. HIGGINS:

Mr. HIGGINS. If the court please, it will be necessary for me to stand at this point, owing to the fact that I have here some papers about which I wish to ask the witness.

Mr. BACON. We can not hear the counsel.

The PRESIDING OFFICER. The Presiding Officer could not hear.

Mr. HIGGINS. I will raise my voice.

The PRESIDING OFFICER. What was the remark of the counsel?

Mr. HIGGINS. That it would be very difficult for me to conduct the examination away from this table, owing to some documents about which I wish to ask the witness. [To the witness.] Mr. Davis, have you been connected, as counsel, with this impeachment proceeding against Judge Swayne?

A. Yes, sir.

Q. For how long?—A. Since the hearing of the committee at Pensacola.

Q. Of the committee?—Yes, sir.

Q. What committee?—A. The committee to take testimony.

Q. You mean the committee of the House of Representatives to investigate?—A. Yes, sir.

Q. Were you or not employed at the time the resolutions were pending before the Florida legislature?—A. I was not.

Q. Were you engaged otherwise in pressing the passage of those resolutions?—A. I was not.

Q. Did you attend the legislature at all with reference to that matter?—A. I did not.

Q. Were you there while it was being conducted?—A. I was not.

Q. You say you did appear before the committee?—A. Yes, sir.

Q. Upon whose employment?—A. Upon my own.

Q. You volunteered, then, in your own interest?—A. I did; and in the interest of others.

Q. What others?—A. The parties who were assisting in securing the evidence and forcing the prosecution.

Q. Who were they?—A. Mr. O'Neal was one of the parties, and, I think, Mr. Hoskins. Those are the only ones directly.

Q. You therefore were connected as counsel in the prosecution of Judge Swayne looking to his impeachment during the life of O'Neal and while O'Neal was pressing it?—A. Yes, sir.

Q. And you say O'Neal did not employ you?—A. He did not employ me.

Q. Who were your associate counsel in that undertaking?—A. Judge Liddon and, I think, Mr. Beard, Mr. Pace—

Q. How do you spell that name?—A. P-a-c-e.

Q. Who else?—A. I do not remember anyone else.

Q. Was Mr. Laney?—A. I believe he was.

Q. Have you been connected with the conduct of this prosecution since that time?—A. Not directly. Judge Liddon has handled that part of it.

Q. Have you had any connection with it?—A. None, except to secure certain evidence.

Q. What was that?—A. The evidence which was gotten from Texas in regard to his expenses.

Q. That you have testified to?—A. Yes, sir.

Q. In other words, you took the trip to Texas to find out what the fare there and back was?—A. I did.

Q. Mr. Davis, where was the præcipe signed for the suit in the circuit court of Escambia County of Florida *McGuire v. Charles Swayne*?—A. I think I signed it in Mr. George W. Pryor's office.

Q. Who were the counsel that brought that suit?—A. Belden, Paquet, and myself, after I was called there.

Q. Were you called there at the same time?—A. Yes, sir.

Q. And whose place was it?—A. George W. Pryor's store.

Q. What kind of a store?—A. A wholesale grocery.

Q. A grocery store?—A. Yes, sir.

Q. Where is it located?—A. On Government street.

Q. At what time of the day or night was that præcipe prepared?—
A. I can not say at what time it was prepared. It was not prepared in my presence. When I arrived at the store Mr. Paquet stated to me: "Mr. Davis, we want to associate you with us in this case. We have decided to withdraw the case from Judge Swayne and to settle his interest, whatever it might be, in this block of land;" or to "adjudicate" it—I believe that was the word he used.

Q. Please repeat that. They wanted your assistance in this case or to associate you in the case?—A. Yes, sir; that was it.

Q. In what case was that?—A. That was *Florida McGuire v. Charles Swayne*.

Q. He said he wanted you to associate himself—A. No; he wanted to associate me with him and Belden in the case of *Florida McGuire v. Charles Swayne*.

Q. What did he say about discontinuing the suit of *McGuire v. The Pensacola City Company*?—A. He said they were going to discontinue that suit; they had decided to adjudicate the title to that block of land, or interest, whatever Judge Swayne had in it.

Q. And thereupon the præcipe was signed, was it?—A. Yes, sir; I signed the præcipe.

Q. Did the other lawyers sign it in your presence?—A. It was signed before I got there.

Q. You were the last one?—A. Yes, sir.

Q. What was done with it then?—A. It was sent to the clerk. I think they sent it immediately to the clerk of the court.

Q. By whom?—A. By Mr. Keyser.

Q. Did you go with the messenger?—A. I did not.

Q. Did you see either the clerk or the sheriff of the county about the issuing or service of that writ?—A. No, sir; I did not.

Q. So that after this order left your hands that ended your connection with the writ that night?—A. Yes, sir.

Q. What time was it that this writ was sent by Keyser?—A. I think it was between 6 and 7 o'clock; I can not say exactly.

Q. To recover what property was that suit brought?—A. Block 91 of the Rivas tract.

Q. Were you present in the United States circuit court during that week, the end of which was Saturday, say on Monday or Tuesday preceding?—A. I was in court off and on during the week.

Q. Did you take any part in the conduct or management of the case of *Florida McGuire v. The Pensacola City Company* during that week?—A. None whatever.

Q. I will ask you if you were not frequently in conversation with the parties to that suit?—A. I was not.

Q. And with the counsel of record in that suit, Messrs. Belden and Paquet?—A. I was not.

Q. Were you or not present in court at the time of a motion for its continuance on Saturday? That was the 11th, was it not?

Mr. THURSTON. The 11th.

Q. (By Mr. HIGGINS.) The 11th day of November?—A. I was in court most of the day on Saturday.

Q. I asked you if you were in court at the time?—A. Yes, sir.

Q. You were present?—A. Yes, sir.

Q. Did you sit with the counsel for *Florida McGuire* during the argument and presentation of the motion for a postponement?—A. I have no knowledge of it.

Q. I should like a more explicit answer than that, sir.—A. I could not say, because I have not paid any attention.

Q. You do not say you were not?—A. No, sir; I do not.

Q. That motion was for a postponement?—A. I can not remember what it was. I think it was either a postponement or a continuance, or something of the sort.

Q. You heard the motion, but you do not know—A. Really, I did not pay enough attention to it to know whether it was a motion for a

continuance or a motion for a postponement. I heard them talking and arguing it.

Q. You do not know that it was a motion to postpone the trial of that cause until about Thursday of next week?—A. No, sir; I could not say. I am inclined to believe, though, it was a motion to postpone instead of to continue.

Q. Was there another suit brought in the matter of Florida McGuire v. The Pensacola City Company, Blount, et al.?

The WITNESS. You mean after that one was so withdrawn?

Mr. HIGGINS. Yes.—A. Yes, sir.

Q. When was that brought?—A. A month or two afterwards.

Q. Is that the case as to which you testified yesterday concerning the bill of exceptions?—A. Yes, sir.

Q. You were, therefore, of counsel in that case?—A. Yes, sir.

Q. Is it on the employment that you speak of as beginning on that night at 6 o'clock?—A. No, sir.

Q. You have said that you discontinued this case in court on your motion on the following Monday morning?—A. Yes, sir.

Q. Was your part in bringing the second suit on the employment you had in moving for that discontinuance?—A. I was not employed for the purpose of discontinuing that suit at all. I did it as a matter of courtesy for Mr. Paquet and Mr. Belden.

Q. But you were of counsel in bringing the suit against Judge Swayne?—A. Yes, sir.

Q. Mr. Davis, were you in court when Judge Swayne brought up the matter of recusing himself, upon Tuesday, the 5th?—A. I was not.

Q. Had you heard of what he had said at that time?—A. I had not.

Q. Did you know at the time you brought that suit against him, on Saturday night, in the circuit court of Escambia County, that he had made the statement from his bench that he did not own block 91, and that neither his wife nor any other member of his family had any interest in it?—A. No, sir.

Q. Then, if that is the case, Mr. Davis, when you were cited before him on the rule to show cause why you should not be punished for contempt, why did you not set up that you had no knowledge of what he then said?—A. I think that is stated.

Q. No, sir; it is not stated.—A. I think it is stated in the answer.

Q. Why did you content yourself in your statement that was presented then with the statement that you were not in the court at the time he made that statement?—A. The position which I—

Q. Answer my question, please.—A. I think it is stated—

Q. Go ahead and answer it in your own way.—A. I can not tell you any other reason.

Mr. Manager PALMER. I did not hear the reason. What was it?

A. My reason was that I think it is stated in the answer that we did not know or hear Judge Swayne make the statement on the 5th day of November,

Q. (By Mr. HIGGINS.) That is your answer?—A. I think so.

Q. Mr. Davis, was your answer sworn to?—A. No, sir.

Q. You say you called witnesses in your behalf—Mr. Blount, and Mr. Keyser; was he the other one?—A. Mr. Fisher; yes, sir.

Q. Were you yourselves sworn on your own behalf?—A. No, sir.

Q. Was Mr. Belden sworn?—A. No, sir.

Q. Neither of you?—A. No, sir.

Q. You were both present?—A. Yes, sir. We discussed that matter at the time we made the answer. As the motion was not sworn to, nor any affidavits presented, therefore it was not necessary for us to swear to our answer, and the position we took was that as the contempt charge was an act committed in the State court therefore this court had no jurisdiction.

Q. (Producing paper.) Mr. Davis will you kindly look at the paper I hand you and say whether or not that is your signature?—A. (After examining paper.) Yes, sir; that is my signature.

Q. Is that a paper presented for you in the United States circuit court for the fifth judicial circuit, relating to the habeas corpus?—A. I do not think it was presented in my case. I think that is an affidavit which was prepared in New Orleans, which Judge Paquet had prepared, and which I signed.

Mr. HIGGINS. If the court please, this is an original paper, and I offer it in evidence.

Mr. Manager PALMER. Be kind enough to let us see it before you offer it.

Mr. HIGGINS. I am offering it now.

Mr. Manager PALMER. I say let us see it.

Mr. HIGGINS. I am offering it now.

Mr. Manager PALMER. You will allow us to see it before you offer it?

Mr. HIGGINS. Of course I will.

Mr. Manager PALMER. Thank you kindly.

Mr. HIGGINS. It needs no thanks.

Mr. Manager DE ARMOND. Mr. President, we suppose there is no objection to identifying the paper, but as to introducing it in evidence, we are introducing evidence now on the other side.

The PRESIDING OFFICER. The Presiding Officer was about to inquire whether the introduction of the paper would be a part of the cross-examination of this witness.

Mr. HIGGINS. It is a matter of practice; it is a part of the examination, and we offer this paper in evidence now, with the further suggestion that as it is an original record we shall be permitted to have a copy of it made for the purpose of printing. We submit it to the other side for that purpose.

Mr. Manager DE ARMOND. It is a paper of some length.

Mr. HIGGINS. A copy of it can be taken from the record. It otherwise appears in the printed proceedings.

Mr. Manager DE ARMOND. It seems to me the regular plan of procedure and the better one is for the managers to offer their testimony now, and after they close their case the counsel for the respondent to offer theirs, instead of reading a long document at the time when the managers are offering their testimony. We do not know what is in the paper.

The PRESIDING OFFICER. The Presiding Officer thinks that it is hardly proper to offer this document in evidence on the part of counsel at this time. If they desire to cross-examine the witness upon anything contained in this document, they can do so without offering it formally as evidence now.

Mr. HIGGINS. I understand that the objection of the managers goes only as to the time of this paper going in evidence; it is not to its competency.

Mr. Manager DE ARMOND. As to the question of competency the managers could not very well make objection when they do not know what the paper is. We have not had any opportunity to know whether to object to it or not.

The PRESIDING OFFICER. The Presiding Officer understands that the witness under cross-examination has been asked if a certain document bears his signature, and he says that it does. The Presiding Officer supposes that it is entirely proper for counsel upon cross-examination to ask him any proper question relating to what is in the document, but that this is not the time to offer it in evidence.

Mr. HIGGINS. Well, Mr. President, we will offer this paper in our own time, but I ask that it be marked for identification simply.

[The paper was marked "Respondent's Exhibit No. 1."]

Q. (By Mr. HIGGINS.) Mr. Davis, kindly look at that paper and see whether your name is appended to it in your own handwriting or not.—

A. (Examining.) Yes, sir.

Q. What is that paper?—A. I think that is the name of the witnesses who were summoned in the case of *Florida McGuire v. W. A. Blount et al.*

Q. Is that the second suit, the record of which was produced here yesterday?—A. Yes, sir.

Q. And this is the list of witnesses?—A. Yes, sir.

Q. This is the original order?—A. Yes, sir.

Mr. HIGGINS I will say to the managers, Mr. President, that this is the original order or præcipe for the witnesses in the case of *Florida McGuire v. Blount et al.* that was introduced by them in evidence yesterday, and as this is an original court paper I make the suggestion that at the proper time for its going in evidence, if there is objection to it now, the copy thereof in the record of the Supreme Court of the United States be admitted as secondary evidence in the same manner as yesterday secondary evidence was likewise admitted as to the bill of exceptions.

Mr. Manager DE ARMOND. So far as the question of introducing from the record instead of the original paper, we do not make any point about that, but the question as to whether it is admissible at all on other grounds will be reserved.

Mr. HIGGINS. Of course I am only speaking of it as secondary evidence. I have no further questions to ask.

Reexamined by Mr. Manager DE ARMOND:

Q. Mr. Davis, you were asked about whether you sat with the counsel in the *Florida McGuire* case Saturday evening, when there was something said about the trial there, or the continuance of it; and you said, as I understood you, that you did not know when you sat there. I ask you whether you sat among them as one of the counsel or whether you were at all connected with the case?—A. I was not.

Q. Then state to the court whether or not, if you sat close by where the attorneys in the case sat, it had any connection with the case or just simply happened so.—A. I had no connection with that case whatever.

Q. I understood you to say that your first connection with the case was on Sunday?—A. On Sunday.

Q. And that as a matter of courtesy and accommodation to Mr. Paquet you appeared Monday and had it dismissed?—A. Yes, sir.

Q. Now, did you have any other connection whatever with that Florida McGuire case?—A. None whatever.

Q. But you were employed when the case of Florida McGuire was instituted again later on?—A. Yes, sir.

Q. Your first connection with the case against Judge Swayne was in the evening when you were called to Pryor's store?—A. Yes, sir.

Q. State to the court whether each of you was given the option by Judge Pardee of paying the fine or enduring the imprisonment? Whether that option was given you by order of Judge Pardee?—A. It was.

Q. How long did you actually remain in jail?—A. About three days.

Q. Then you paid the \$100 fine and you were discharged?—A. Yes, sir.

Q. Mr. Belden remained the full time?—A. Yes, sir.

Q. Do you know anything about whether General Belden was in court when the judge made any remarks, if he did make any, about his connection or lack of connection with the Florida McGuire case?—A. I do not know.

Q. You said that you heard no such remarks and knew nothing about it?—A. I knew nothing about it.

Q. If I understood you correctly, you knew nothing about it until after the dismissal of the Florida McGuire case, and first heard of it when the judge made a statement about the time of the filing of this statement in contempt?—A. Yes, sir.

Q. You were asked why, when you were brought before Judge Swayne, you did not deny any knowledge of any statement made by him about the lack of connection or interest between himself or any member of his family in the Florida McGuire case, and I understood you to say that you did make denial of that in your answer?—A. I think so, sir.

Mr. Manager DE ARMOND. The answer, I think, will show it. I believe that is all, Mr. President, of this witness.

Mr. BACON. Mr. President, I have a question which I desire to have propounded to the witness.

The PRESIDING OFFICER. It will be read by the Secretary.

The Secretary read as follows:

Q. In the services rendered by you in connection with the proceedings to secure the impeachment of Judge Swayne were you paid by anyone for such services, or were such services rendered voluntarily and without pecuniary compensation?

A. Rendered voluntarily, without a dollar from anyone.

Mr. MORGAN. I have a question which I desire to submit to the witness.

The PRESIDING OFFICER. The Senator from Alabama propounds the following question:

The Secretary read as follows:

Q. Did Belden pay the fine of \$100 imposed on him by Judge Swayne?

A. He did not. He suffered the remainder of the imprisonment.

Mr. MORGAN. May I ask a question orally? I have not time to draw it up. I wish to ask just one question orally.

The PRESIDING OFFICER. If there is no objection, the question may be asked.

Mr. MORGAN. By whose order, if by any order, was he discharged from imprisonment without paying his fine?

The WITNESS. By the decision of Judge Pardee, which stated, as the court had exceeded its authority in fining and imprisoning, where we appeared and either paid the fine or suffered the remainder of the imprisonment, we would be entitled to our discharge.

J. J. HOOTEN, sworn and examined.

By Mr. Manager DE ARMOND:

Q. State where you live.—A. I live in Pensacola, Fla.

Q. What is your business, Mr. Hooten?—A. Real estate, insurance, and loan agent.

Q. How long have you lived there, and how long have you been engaged in that business?—A. I have lived in Pensacola the greater part of thirty-odd years. I have been in the real estate business twenty-odd years.

Q. Do you know Judge Charles Swayne?—A. I do.

Q. Did you have any business transactions with Judge Swayne in relation to the sale of some property of which you were agent?—A. I did.

Q. Did you take Judge Swayne over the property and show him the property?—A. Yes, sir.

Q. Did you make sale to him?—A. Yes, sir.

Q. Was there included in the property sold—A. In answering that question I would state that one piece I did and one I did not.

Q. One you showed him and one you did not?—A. When we finally closed up the trade on the other we did not. There were two pieces of property in question.

Q. Was one piece of the property block 91?—A. Block 91, new city.

Q. Is that one of the pieces of property that you sold to Judge Swayne?—A. One of the pieces that I expected to sell.

Q. That you contracted to sell?—A. Yes, sir.

Q. State whether that property was conveyed to Judge Swayne when the trade was consummated.—A. What is the question, please?

Q. State whether that was actually conveyed to him or to a member of his family, or whether the trade fell through and was not completed.—A. There was a deed drawn, but the deed was never delivered to Judge Swayne's wife.

Q. The deed was drawn to Judge Swayne's wife?—A. Yes, sir.

Q. But not delivered?—A. No, sir.

Q. Did you have any correspondence with Judge Swayne about the matter?—A. I did.

Mr. Manager DE ARMOND. I would ask counsel for the respondent whether they have a copy of the letter written by Mr. Hooten? [To the witness.] Did you write a letter to Judge Swayne about this matter?

The WITNESS. Yes, sir.

Q. Have you the letter?—A. Yes, sir.

Mr. Manager DE ARMOND to counsel for the respondent. Have you the original letter?

Mr. HIGGINS. We have not the letter, Mr. Manager, or we would produce it. We have no objection to secondary evidence at all.

Q. (By Mr. Manager DE ARMOND.) You rode out with Judge

Swayne to look over the property, did you? You took him out?—A. Yes, sir.

Q. You had conversation with him about investments in a general way?—A. Most naturally; yes, sir.

Q. You talked about this block 91, among other pieces?—A. Yes, sir.

Q. When was this?—A. I think about June or July, 1901.

Q. What did Judge Swayne say would happen with reference to litigation in the Florida McGuire litigation if he bought this block 91?—A. He stated if he bought it it would disqualify him in the case in case it came up before him.

Q. This block 91 was in what is called the Rivas tract?—A. Yes, sir; the Chaveaux tract it is called.

Q. The tract embraced in the litigation of Florida McGuire against the Pensacola City Company and others?—A. Yes, sir.

Q. The Judge stated that if he bought that it would disqualify him from sitting as judge in that case. You say a deed was made out to that tract of land, but never was delivered?—A. Yes, sir.

Q. What was done with that deed?—A. I returned it to Mr. Charles H. Edgar, the gentleman who executed it.

Q. Did you write a letter to Judge Swayne upon the receipt of that deed from Mr. Edgar?—A. I wrote him a letter, I will not say immediately upon the receipt of it.

Q. After you had received it, I mean?—A. Yes, sir.

Q. Now, will you turn to that letter and read it?—A. Yes, sir.

The witness read the letter from a letter book, as follows:

PENSACOLA, FLA., July 19, 1901.

Judge CHARLES SWAYNE,
Guyencourt, Del.

DEAR SIR: We have the deeds in hand for blocks 91 and 240 of the new city tract. Mr. Edgar, owner of block 91, has refused to give a warranty deed to this block; he mailed us a quitclaim deed, which we would not receive. He writes that he is only willing to give a bargain-and-sale deed, leaving out the warranty clause. He is afraid of the old Alberta Caro claim, and this seems to be his objection. We have recently made an abstract of title to this property and it appears perfectly clear. If we were buying the property ourselves, we would just as soon have one deed as the other; but we put the matter before you, so as to have you perfectly satisfied. In case his deed is not satisfactory to you, we guess we will have to drop this block for the time being, or until you come home, and fix up papers so as to cover simply block 240.

Thanking you for an immediate reply, we are,
Yours, truly,

THOMAS C. WATSON & Co.

Q. (By Mr. Manager DE ARMOND.) Did you receive a reply to that letter.—A. I did.

Q. Have you that reply?—A. Yes, sir.

Q. Just read that.

The witness read the letter, as follows:

Judge's chambers, United States district court, northern district of Florida. Charles Swayne, judge.

GUYENCOURT, DEL., 7 Mo., 22d, 1901.

T. C. WATSON & Co.,
Pensacola, Fla.

GENTLEMEN: You may omit block 91, and send papers for the other only, and oblige,

Yours, truly,

CHAS. SWAYNE.

Q. (By Mr. Manager DE ARMOND.) That transaction dropped there as far as you were concerned, did it, with reference to block 91?—A. I think it did, sir; yes, sir.

Q. The negotiation was carried forward in May, you think?—A. No; I think I said June or July.

Q. You took Judge Swayne out there in what month, do you think, when you had this conversation with him?—A. I should say about June; possibly the 1st of July.

Q. That was the time you had the talk with him about that block 91 being in this tract of land in dispute in the Florida McGuire matter, and when he said that if he bought it he would be disqualified from trying that case?—A. As my memory best serves me; yes, sir.

Q. You said that you have been in the real estate business in Pensacola for something like twenty years?—A. Twenty-odd years, sir.

Q. Are you well acquainted in the city, and have been during that time?—A. Yes, sir.

Q. How long have you known Judge Swayne?—A. I do not know, sir, how long I have known him. I have known him by sight possibly seven or eight years; something like that.

Q. State whether you rented a cottage at one time to Judge Swayne.—A. Yes, sir; I did.

Q. Known as the Simmons cottage?—A. Yes, sir.

Q. About when was that?—A. We started to charge him rent about October 1, in the year 1900.

Q. You have already stated, I believe, that you were well acquainted in the city?—A. Yes, sir.

A. Do you know of Judge Swayne ever living in the city before that time?—A. I have seen him there; I could not say.

Q. I ask you whether you know?—A. No, sir; I do not.

Q. Do you think, in the pursuit of your business and your general acquaintance with the community, if he had lived there before that time you would have known him?

Mr. HIGGINS (to the witness). Do not answer. Mr. President, I submit that that is both leading his own witness and asking an opinion, and that the question is objectionable on both grounds.

Mr. Manager DE ARMOND. I think it is a proper question.

The PRESIDING OFFICER. In the form in which it was asked it may have been a trifle leading. The Presiding Officer thinks the question might be asked of the witness, who says that he is familiar with the residences of people in the city.

Mr. Manager DE ARMOND. Very well, Mr. President. [To the witness.] Were you familiar with the residence portion of the city during the time you were in business there?

A. I have a general knowledge of the whole city, sir.

Q. (By Mr. Manager DE ARMOND.) State to the court whether or not you made it your business, or a part of your business, to keep well acquainted and to be well acquainted with the city and the people who occupied houses in the city.—A. I do not think that I pay so much attention about who rent houses or who do not, but I try to keep well acquainted and posted on everything that happens in the city, especially affecting the real estate.

Q. State to the court whether or not, in the course of your business or otherwise, you ever before knew of Judge Swayne living in the city until he rented that cottage and moved in.—A. Not to my knowledge.

Q. Of his having a residence in the city?—A. Not to my knowledge.
 The PRESIDING OFFICER. The question which was propounded was whether the witness would have been likely to have known it if such had been the case. The Presiding Officer thinks that question may be answered.

Q. (By Mr. Manager DE ARMOND.) State to the court whether you think if he had had a residence in the city during the time you would have known it.—A. Well, there are a great many people who might move in and out of Pensacola and I would not know anything about it.

Q. The question is whether if Judge Swayne had had a residence in the city you think you would have known it.—A. I do not know that I would have paid any more attention to Judge Swayne than to any other individual.

Mr. Manager DE ARMOND. That is not really an answer to the question. I ask that the question be read.

The Reporter read the question as follows:

Q. The question is whether if Judge Swayne had had a residence in the city you think you would have known it?

A. I answer that by saying that I did not know everyone who moved in and out of the city. He might have moved in unbeknown to me and he might have moved out unbeknown to me.

Q. If he had resided there for any length of time— A. I probably would have known that.

Q. Was there any further correspondence between you and Judge Swayne?—A. On any other line, you mean?

Q. No; with regard to this deal that was talked about.—A. Block 91?

Q. No; the general deal.—A. Yes, sir.

Q. Did you write him after receiving his letter, and did you get another letter from him?—A. I do not think I wrote him any further regarding block 91. I did about block 240.

Q. Will you turn to your book and read your letter in reply to his which you have just read?—A. Yes, sir.

Mr. HIGGINS. I should like to have that question repeated.

Mr. Manager DE ARMOND. The question is whether the witness wrote Judge Swayne in reply to the letter from Judge Swayne which he read just a few moments ago. He says he did, and I ask him to read that letter.

The witness read from a letter book, as follows:

JULY 25, 1901.

Judge CHARLES SWAYNE, *Guyencourt, Del.*

DEAR JUDGE: In reply to yours of the 22d instant, we herewith inclose you new mortgage and note for you and Mrs. Swayne to sign. I left the amount blank both in the mortgage as well as the note. We are sorry that the trade on block 91 did not go through, and we would like to talk to you on this subject when you return. We herewith inclose you receipts for rent and fire insurance.

Yours, truly,

THOS. C. WATSON & Co.

Then there is a postscript, as follows:

You can fill in the amount in the mortgage and note.

Cross-examined by Mr. HIGGINS:

Q. That mortgage and note were a mortgage and note upon the other piece of property?—A. To secure the balance of the purchase money

due upon block 240, which is outside of the Rivas tract—the tract in question.

Q. It had nothing to do, therefore, with this transaction with Edgar about the purchase of block 91?—A. No, sir; this property belonged to another individual.

Q. And in your letter in reply to the one received from Judge Swayne you say there that that ended the matter, unless it was taken up again?—A. I said we would like to talk over the subject when he returned; but that ended it.

Q. What did you say?—A. That ended it, sir.

Q. That ended it?—A. Yes, sir; that ended it.

Q. Did Judge Swayne ever become the owner of that piece of property?—A. No, sir.

Q. Or Mrs. Swayne?—A. No, sir.

Q. Or acquire any interest in it?—A. No, sir; not to my knowledge.

Q. What time of the year was that correspondence?—A. July 25, 1901.

Q. And when is it your recollection that you drove Judge Swayne over the property?—A. I think it must have been about the month of June.

Q. Now, you have said that the judge at that time said that if he were to purchase it, or Mrs. Swayne were to purchase it, it would oust him from trying the Florida McGuire case?—A. Disqualify him.

Q. Disqualify him. You say “if my memory best serves me?”—A. Yes, sir.

Q. Well, have you any doubt, therefore, as to whether he did say it or not?—A. No, sir; I feel most confident that he did say it.

Q. Well, you say “most confident.” Do you say positively that he did?—A. Well, as best my memory serves me.

Q. Well, would you go any further than that?—A. No; I think I would stop about there.

Q. Did any other member of Judge Swayne’s family ever become interested in that property—that block 91?—A. No, sir.

Q. Did you, or not, afterwards sell that property to somebody else?—A. It was sold afterwards, but not through me. I own a portion of it myself to-day.

Q. But that transaction was subsequently?—A. Yes, sir.

Q. Do you know what year?—A. That it was afterwards sold?

Q. Yes.—A. I should say in 1903.

Q. I will ask this question: Was any inquiry made of you by anyone at that time as to whether Judge Swayne or his wife or any member of his family owned that property?—A. At that particular time?

Q. Yes.—A. Well, before I had thought that I had sold the block to Judge Swayne I was treating with another party for the same block, but he was hanging fire as to the consideration, and I think I informed him that it had been sold to Judge Swayne; that he was a little bit too slow.

Q. Was there any inquiry made of you as to whether Judge Swayne was the owner of it by Louis P. Paquet, afterwards?—A. No, sir.

Q. Or by Simeon Belden?—A. No, sir.

Q. Or Elza T. Davis?—A. Not to my knowledge; I think not. I do not know the first two gentlemen whose names you mention. I do know Mr. Davis.

Q. Did he make any inquiry of your firm?—A. I have no recollection of ever speaking to Mr. Davis on any subject whatever in any form.

Q. The other men you do not know?—A. No, sir.

Reexamined by Mr. Manager DE ARMOND:

Q. Mr. Hooten, I will ask you whether a suit was brought against the owner of that block 91?—A. Block 91?

Q. For your commission for selling it to Judge Swayne?—A. There was; yes, sir.

Q. How was that suit disposed of—by compromise?—A. Yes, sir.

Mr. Manager DE ARMOND. That, I believe, is all.

The PRESIDING OFFICER. Who is the next witness?

Mr. HOPKINS. Mr. President, before the witness leaves the stand I should like to have the first letter read by the witness reread.

The PRESIDING OFFICER. The witness will again read the first letter which was read.

The witness read from a letter book as follows:

PENSACOLA, FLA., July 19, 1901.

Judge CHARLES SWAYNE,
Guyencourt, Del.

DEAR SIR: We have the deeds in hand for blocks 91 and 240 of the new city tract. Mr. Edgar, owner of block 91, has refused to give a warranty deed to this block. He mailed us a quitclaim deed, which we would not receive. He writes that he is only willing to give a bargain and sale deed, leaving out the warranty clause. He is afraid of the old Alberta Caro claim, and this seems to be his objection. We have recently made an abstract of title to this property, and it appears perfectly clear. If we were buying the property ourselves we would just as soon have one deed as the other, but we put the matter before you so as to have you perfectly satisfied. In case his deed is not satisfactory to you, we guess we will have to drop this block for the time being, or until you come home, and fix up papers so as to cover simply block 240.

Thanking you for an immediate reply, we are,

Yours, truly,

THOMAS C. WATSON & Co.

Mr. HIGGINS. I wish to ask a question founded on the last one of the learned manager. [To the witness.] You say that a suit was brought by you against Edgar?—A. Yes, sir.

Q. What for?—A. For commission.

Q. On what?—A. The sale of block 91.

Q. What was your cause of action?—A. Because he refused to give a warranty deed.

Q. Because he refused?—A. Yes, sir.

Q. In other words, was it that you treated it as a transaction that he might have completed if he could have given a good title—a clear title—but that he did not do it, and therefore you had earned your commission?—A. Yes, sir.

Q. You think you have earned the money when you have found a purchaser, whether or not the transaction is completed?—A. Whenever I find a party who is ready, able, and willing to buy, I think I have earned my commission.

Q. Whether the transaction is carried out or not?—A. Yes, sir.

Q. And here you earned it, although the deal had not been carried out?—A. Yes, sir.

The PRESIDING OFFICER. While the Presiding Officer makes no criticism on the course of the examination and cross-examination, he desires to say that the time of the Senate is very precious, and he hopes that there will be as little time taken by immaterial questions, either by the

managers or by counsel, as possible, and that we may get along with this case.

Mr. Manager DE ARMOND. Mr. President, our desire certainly is to consume no time unnecessarily, and if we have asked any immaterial questions thus far in the examination this morning we are not conscious of it.

DONALD McCLELLAN, sworn and examined.

By Mr. Manager DE ARMOND:

Q. State your name to the court.—A. Donald McClellan.

Q. Where do you live?—A. Pensacola, Fla.

Q. What is your business?—A. Newspaper reporter.

Q. Did you live in that State, or were you in that State, at the time of the contempt proceedings against Belden and Davis?—A. Yes, sir; I did.

Q. Were you in the court room during the hearing of that case and the pronouncing of sentence by Judge Swayne?—A. I was, sir.

Q. Did you write an account of that proceeding for your paper?—A. Yes, sir; I did.

Q. Was it published in the paper?—A. It was, in the News.

Q. State whether the article published in the paper was submitted to Judge Swayne before it was published.—A. It was, sir.

Q. State what the judge did with it or about it.—A. Well, he read it over very carefully.

Q. Did he make any changes in it?—A. Very few; yes, sir.

Q. He made some changes in it?—A. Yes, sir.

Q. How?—A. He erased part of it.

Q. He erased some?—A. Yes.

Q. Did he write in anything?—A. He did not.

Q. Did he add any words?—A. He changed, according to my recollection, one word; that is all.

Q. Do you know what that word was?—A. I do not, sir.

Q. (Handing witness a newspaper.) Look at the article in that paper and state to the court whether or not that is the article you wrote giving an account of that proceeding.—A. (Examining.) It is, sir.

Mr. Manager DE ARMOND. We should like to have the article read, Mr. President, by the Secretary.

The PRESIDING OFFICER. There being no objection, the article will be read.

The Secretary read as follows:

[The Daily News, Pensacola, Fla., Tuesday, November 12, 1901.]

ATTORNEYS HELD FOR CONTEMPT.

Samuel Belden, esq., and E. T. Davis, esq., were fined \$100 and costs each and to be confined ten days each in the county jail for contempt of court. The sentences were passed in the presence of almost the entire city bar, and were imposed by Judge Charles Swayne, of the United States district court for the northern district of Florida. The sentences were pronounced at exactly 11.10 o'clock to-day in the United States court room, and immediately afterwards the court took an adjournment until 10 a. m. to-morrow.

Court was convened this morning at 10.03 o'clock and in the presence of a large number of representative citizens. The fact had become public that there was a probability of something of a sensational nature to develop, and curiosity manifested itself among the better class of people.

Immediately upon convening of the court, Mr. Davis, one of the attorneys in the proceedings, in behalf of himself and associates, submitted to the court reasons why

the proceedings of contempt should not be carried out, and quoted authorities bearing upon jurisdiction of the court in contempt proceedings. The reasons were submitted in writing, after being read by defendant, and were placed on file by the clerk.

Hons. William Fisher and W. A. Blount, in behalf of the court, asked that witnesses for defendants be called. They were John Delham and E. B. Barker, both of whom are connected with the Press. The first named knew nothing of the authorship of an article, "Judge Swayne summoned," etc., which appeared in that paper Sunday morning, and upon the strength of which were based the proceedings of contempt. The original manuscript of the article was produced in court by this witness, but as he could give no information as to authorship, etc., he was excused and the night editor, E. D. Barker, called.

In response to interrogations witness stated he was connected with the Press; that on Saturday night last, about 11 o'clock, G. W. Prior (who, it afterwards developed, had furnished money for prosecuting the case), had submitted it as a news item, and that in that capacity it was accepted and printed.

Capt. J. C. Keyser was called as witness on behalf of the court. He said, among other things, that he thought he was an heir to the property in litigation; that he had carried the præcipe for summons to the circuit court after 6 p. m. Saturday, and had told clerk to file same and issue papers before Monday; that his expenses on a recent trip to Jacksonville had been borne by outside parties, the names of whom he could not recollect. This witness seemed to testify with great reluctance, and showed an apparent disposition to dodge questions propounded by court's attorney.

B. H. Burton, deputy clerk of circuit court, called. Stated præcipe for summons had been brought to his home late Saturday, with a request to issue papers at once, as they had to be served instant; that he had issued papers, and that he was conversant with all duties appertaining to the office which he filled and possessed a knowledge of legal papers, etc.

At the conclusion of Mr. Burton's testimony Mr. Davis created a sensation of a mild nature by requesting the court's attorneys to be used as his witnesses. Mr. Blount and Mr. Fisher were then sworn, and answered two questions, each bearing on ownership of property and case in general. This finished testimony of witnesses.

Judge Swayne, after a short deliberation, spoke of what he termed "crooked methods" adopted by counsel for the plaintiffs; that the law, the highest calling in the land, had been disgraced by the ignorance and vicious methods pursued by counsel who should know better; that the methods adopted by them in taking the suit to the State court could not be looked over, as there was not a particle of excuse for it, and, in consonance with their duty, the attorneys (Messrs. Blount and Fisher) had brought the matter to the court's attention. Adverting to the evidence adduced, Judge Swayne characterized some of it as bearing the brand of perjury of the most pronounced type; that the witness (whose name was not called) had dodged the questions propounded at every opportunity and had made false statements to meet the occasion.

The judge spoke of the ages of the defendants and had gone out of his way to endeavor to rid himself of performing the saddest thing he had done in the twelve years he had occupied the bench—that of imposing a sentence when he found he could not dispose of the matter otherwise. In conclusion he said

"In conclusion, the court finds the two gentlemen, E. S. Belden and E. T. Davis, guilty as charged, and they shall pay a fine of \$100 each, and costs, be suspended from practice in this court for two years, and be imprisoned in the county jail for a term of ten days each."

The judge ended pronouncing the penalty with much feeling, but upon the intercession of Hon. W. A. Blount the portion of the penalty in relation to a two years' suspension of practice was reconsidered and withdrawn.

Mr. Manager DE ARMOND. Now, tell the court, if you can, where Judge Swayne made changes in that article.—A. It would be a pretty hard matter to tell, sir; it has been four years.

Mr. Manager DE ARMOND. I can not hear you.—A. I say that it would be a pretty hard matter to tell, sir.

Q. Can you indicate any place?—A. No, sir; I can not.

Q. Do you recall any expression that he struck out? Is there anything in there about anybody being a stench, or the conduct of anybody being a stench in the nostrils of the community?—A. No, sir; that is not in there.

Q. Was that in the article as you wrote it?—A. My recollection serves me that it was.

Q. That Judge Swayne had stricken out?—A. Yes, sir. I should like to make an explanation, sir.

Mr. Manager DE ARMOND. Well, make it.

The WITNESS. I was not a stenographer—

Mr. TELLER. Speak a little louder.

The WITNESS. I was not a stenographer, and I asked Judge Swayne if he would look over the article after I had prepared it for the paper, and he said he would—to bring it to his residence. I did so. He read it over and made a change.

Q. Is there anything further in the way of explanation?—A. No, sir.

Mr. CLARK, of Wyoming. Would it be allowed to have the stenographer read the last answer of the witness? We were entirely unable to hear.

The PRESIDING OFFICER. The reporter will read the answer.

The Reporter read as follows:

The WITNESS. I was not a stenographer, and I asked Judge Swayne if he would look over the article after I had prepared it for the paper, and he said he would—to bring it to his residence. I did so. He read it over and made a change.

Q. Is there anything further in the way of explanation?—A. No, sir.

Q. (By Mr. Manager DE ARMOND.) State to the court whether that article puts strongly or very mildly what Judge Swayne said in sentencing these gentlemen.—A. I should say it was a mild statement.

Q. A mild statement?—A. Yes, sir.

Q. What was the manner of Judge Swayne? Did he seem to be angry?

The PRESIDING OFFICER. That is rather leading.

Mr. HIGGINS. I should think so.

Mr. Manager DE ARMOND. Very well. [To the witness.] What was the manner of Judge Swayne?—A. He seemed to feel it at the time he passed sentence on Judge Belden; but he seemed angry when he talked to Mr. Davis. Judge Belden is a very old man, it seems.

Q. What was the condition of General Belden?—A. I do not know that personally, sir. I had just been told that his face was paralyzed. He was very old, and he was sick all the time he was in jail. I know that.

Q. Well, now, about that expression being “a stench in the nostrils of the community.” Was that language, or language substantially like that, used by Judge Swayne, or was it not?—A. My recollection serves me that he said “it was a stench in the nostrils of decent people.”

Q. State to the court whether or not you took pains and made an effort to have the article mild and moderate in tone in giving an account of the contempt proceedings.—A. Yes, sir; I did.

Mr. Manager DE ARMOND. Cross-examine.

Cross-examined by Mr. HIGGINS:

Q. Mr. McClellan, do you know Mr. Wolf, the deputy United States marshal?—A. Yes, sir.

Q. Do you remember being in conversation with him on Tuesday or Wednesday, February 7 or 8 of the present month, in the United States marshal's office at Pensacola?—A. I do not know as to that date exactly. I am there almost every day.

Q. But you do remember about that time talking with him?—A. Yes, sir.

Q. When one Mr. R. P. Wharton was also present?—A. Yes, sir.

Q. Now, did you or not at that time say that when you took this account, as a reporter for your newspaper, of the contempt proceedings that you were looking the greater part of the time at your notes and the defendant, Mr. Davis, and you were not certain whether Judge Swayne said that Davis and Belden were a stench in the nostrils of the people or that their conduct was such?—A. I did not say that, sir.

Q. Did you say it?—A. I did not say it.

Q. What did you say—that it was so long ago your memory was faulty and that you were not clear on the subject? Did you say that?—A. At that time I did; yes, sir. I told him I had not given it any consideration.

Q. But you did not say that you were not certain whether Judge Swayne had made this remark or not?—A. No, sir; I am not certain.

Q. What did you say to these gentlemen, then?—A. I said something about—I do not know about that particular date—something about it being so long ago that I did not recollect it clearly.

Q. Then you did say to them that, as this was so long ago, your recollection was not clear?—A. At that time; yes, sir.

Q. At the time you were talking to them?—A. At the time I was talking to them.

Q. Not clear about what, sir?—A. About the entire proceeding.

Q. About the entire proceeding?—A. Yes.

Q. Was it, or was it not, that you were not clear about the use by the Judge of that remark?—A. No, sir; it was not; it was the entire thing.

Mr. HIGGINS. That will do.

Reexamined by Mr. Manager DE ARMOND:

Q. Why did you submit that article to Judge Swayne?

Mr. HIGGINS. That has been explained.

Mr. Manager PALMER. No; it has not.

Mr. Manager DE ARMOND. I do not understand whether or not there is objection to that question.

Mr. HIGGINS. No, sir; I merely thought it had already been asked.

Mr. Manager DE ARMOND. No, I think not. (To the witness.) Why did you submit the newspaper article to Judge Swayne before putting it in the paper?—A. Well, sir; I wanted to get it correct.

Q. Well, did you have any other reason? Was there anything else that moved you to submit it to him?

A. Well, I had an idea if I got it wrong the Judge would call me up for it. [Laughter.]

Q. State whether you wished the article to go into the paper in a form that Judge Swayne would not find fault with.—A. That is right.

Mr. Manager DE ARMOND. That is all.

The PRESIDING OFFICER. Are there any other witnesses?

Mr. Manager PALMER. Mr. President, Mr. Belden telegraphed me that he left on Tuesday night, although he is very sick, and he will be here to-morrow morning. We have no further witnesses for this afternoon, sir.

Mr. FAIRBANKS. I move that the Senate, sitting as a court of impeachment, do now adjourn until to-morrow.

The motion was agreed to; and (at 4 o'clock and 10 minutes p. m.) the Senate, sitting as a court of impeachment, adjourned until to-morrow, February 16, at 2 o'clock p. m.

The managers on the part of the House and the respondent and his counsel retired from the Chamber.

IN THE SENATE, *February 16, 1905.*

MR. PLATT, of Connecticut, assumed the chair.

The PRESIDING OFFICER (Mr. PLATT, of Connecticut). The Senate is now sitting for the trial of the impeachment of Charles Swayne, judge of the United States in and for the northern district of Florida. The Sergeant-at-Arms will make proclamation.

The Sergeant-at-Arms made the usual proclamation.

The PRESIDING OFFICER. The Sergeant-at-Arms will see if the managers on the part of the House are in attendance.

The managers on the part of the House (with the exception of Mr. SMITH) appeared and were conducted to the seats assigned them.

The respondent, Judge Charles Swayne, accompanied by his counsel, Mr. Higgins and Mr. Thurston, entered the Chamber and took the seats assigned them.

The PRESIDING OFFICER. The Secretary will read the Journal of the last trial day.

The Journal of the proceedings of the Senate sitting for the trial of the impeachment February 15 was read.

The PRESIDING OFFICER. Are the managers ready to proceed?

Mr. Manager PALMER. Yes, sir.

Mr. Manager DE ARMOND. I call Mr. Coston.

Mr. THURSTON. Mr. President, before that is done we have a request to make. I ask to have the witness, Donald McLellan, recalled, to cross-examine him a moment, for the purpose of laying the foundation for impeachment by contradiction. Our memorandum on that subject was not at hand yesterday afternoon, and that is the reason why we did not lay the foundation then.

The PRESIDING OFFICER. The foundation for what?

Mr. THURSTON. The foundation for impeachment by contradiction. We wish to ask him as to whether or not on two certain occasions he made certain statements which are inconsistent with the testimony he gave on the witness stand.

The PRESIDING OFFICER. The Sergeant-at-Arms will call the witness.

DONALD McLELLAN recalled.

Reexamined by Mr. THURSTON:

Q. Do you know F. W. Marsh, clerk of the United States court?—A. Yes, sir.

Q. At Pensacola, Fla.?—A. Yes, sir.

Q. Did you have a conversation with him at his office in the United States court building, city of Pensacola, Fla., on or about the 27th day of January last?—A. I think so, sir.

Q. Did you or did you not at that time state to him, in substance and effect, as follows: That on the trial of Davis and Belden for contempt you took down the judge's remarks just as given?—A. No, sir; I did not.

Q. Did you not, on that occasion, further say that you afterwards took the manuscript to Judge Swayne, and he looked it over, but made no corrections?—A. I told him—

Q. Did you or did you not state that?—A. Not clear.

Mr. SPOONER. Mr. President, what is the answer of the witness?

The PRESIDING OFFICER. The witness is not heard. The reporter will read the last question and answer.

The reporter read as follows:

Q. Did you or did you not state that?—A. Not clear.

Q. (By Mr. THURSTON.) Did you or did you not state at that time and place that you afterwards took the manuscript to Judge Swayne and that he looked it over, but made no corrections?—A. No, sir; I did not.

Q. Did you not further state that Judge Swayne said to you that your statement was about right, or words to that effect?—A. I do not recollect it that way, sir.

Q. Then you are unable to say whether you said it or not, are you?—A. I can say just about what I told Mr. Marsh.

Q. No; I am not asking you that. Did you or did you not state that?—A. I do not think I did, sir.

Q. Did you or did you not at that time and place state to Mr. Marsh that there was no abusive language used by Judge Swayne at the time of the sentence?—A. That is not so.

Q. You did not state that?—A. No, sir; I did not.

Q. Did you or did you not then and there state to Mr. Marsh that Judge Swayne did not use the expression that Mr. Davis and General Belden were a stench in the nostrils of the people, and that he did not state that their conduct was a stench in the nostrils of the people, or words to that effect?—A. I said at that time—

Q. I am asking you, did or did you not state that?—A. I do not think so, sir.

Q. Did you, or did you not, at that time state to Mr. Marsh that Judge Swayne's conduct at the trial of Davis and Belden for contempt was dignified, and that it was what you thought a judge's conduct should be?—A. I did not, sir.

Q. You did not?—A. No, sir.

Q. Did you not further state at that time that Judge Swayne's appearance was that of sadness and not anger?—A. When sentencing Judge Belden.

Mr. SPOONER. Mr. President, I am listening intently, but I can not hear the witness.

Mr. THURSTON. He says—

Mr. SPOONER. I ask that the answer be read.

The PRESIDING OFFICER. The last question and answer will be read by the reporter.

The reporter read as follows:

Q. Did you not further state at that time that Judge Swayne's appearance was that of sadness and not anger?—A. When sentencing Judge Belden.

Q. (By Mr. THURSTON.) Did you meet Mr. Marsh on the street the day following that conversation in Pensacola, Fla.?—A. I think so.

Mr. DANIEL. Mr. President, I have not heard the answer of the witness. I ask that it be read.

The PRESIDING OFFICER. The answer will be read.

The reporter read as follows:

A. I think so.

Q. (By Mr. THURSTON.) At that time and place I have stated on the street of Pensacola in front of the Parlor Market, did or did you not state to Mr. Marsh that you had been up to the Escambia Hotel to see

Judge Liddon, and he had asked you about that article; that you expected you would be summoned to Washington, but you did not want to go for fear you would say something you ought not to say?—A. I did not say that, sir.

Mr. MALLORY. Mr. President, I should like to inquire where this alleged conversation with Marsh is said to have taken place.

Mr. THURSTON. In the beginning, on or about the 27th day of January last, at the office of the clerk of the United States court, in Pensacola, Fla. The last question relates to a conversation on the street the following day, in Pensacola, in front of the Parlor Market. [To Mr. Manager De Armond.] That is all.

Reexamined by Mr. Manager DE ARMOND:

Q. Mr. McLellan, state to the court what your conversation with Mr. Marsh was on the occasion to which your attention has been directed.—A. On the street?

Q. Well, the street conversation.—A. I told him I had met Judge Liddon and he had questioned me on the case, and he had said something about going to Washington. That is as far as I recollect it.

Mr. CARMACK. Mr. President, I should like to have the answer of the witness read.

The PRESIDING OFFICER. The answer will be read by the Official Reporter.

The reporter read as follows:

A. I told him I had met Judge Liddon and he had questioned me on the case, and he had said something about going to Washington. That is as far as I recollect it.

Q. (By Manager DE ARMOND.) How did that conversation come up?—A. I saw him previously that day in his office. He asked me about this sentencing business of Mr. Davis and General Belden.

Q. That was at his office?—A. Yes, sir; the same day.

Q. What was that conversation?—A. I told him I had not given the matter a thought; it was four years ago; that my mind was not clear on it.

Q. Who brought up that conversation?—A. Mr. Marsh.

Q. Who brought up the conversation on the street?—A. Well, he was waiting for a street car and I passed him—I met him, rather.

Q. Did he speak to you about the matter or did you speak to him about it first?—A. I spoke to him.

Q. What further conversation did you have at his office?—A. He asked me about this newspaper article.

Q. What did he ask you about it?—A. He asked me if I remembered it. I told him I had not given it much consideration; that I did not expect to be summoned. That is as I recollect it. And he asked me about Judge Swayne's conduct on the stand in sentencing these attorneys.

Q. Well, what was said about that?—A. I told him at the time that I thought Judge Swayne used language in keeping with the occasion. I believe those are my words to him.

Mr. SCOTT. Mr. President, it is impossible for us here to hear a word the witness says.

The PRESIDING OFFICER. The Presiding Officer knows of no way by which a witness can be heard if he can not speak loud enough to have his voice carried to the farthest extent of the Chamber; but the reporters can, if desired, repeat the questions and answers.

Mr. SPOONER. Let them be repeated, Mr. President.

Mr. CARMACK. I suggest, if the examination of this witness is to continue, that the reporter read the answers of the witness. Some of us here can not hear any of his answers; I can not. Let all the witness's answers be read.

The PRESIDING OFFICER. The reporter will read—

Mr. QUARLES. I would suggest, instead of annoying the reporter and interrupting his proceeding, that we resort to the same course we did the other day, which worked very well. Let the Secretary repeat each answer of the witness, and then we will hear it.

The PRESIDING OFFICER. Will that be agreeable to Senators? The reporter who took the last few questions has retired to his room, and if it is entirely agreeable to Senators—

Mr. CARMACK. I think the suggestion of the Senator from Wisconsin [Mr. Quarles] would be the better way.

The PRESIDING OFFICER. If it is entirely agreeable to Senators, the Secretary will repeat the answers of the witness as they are given.

The subsequent answers of the witness were repeated to the Senate by the Chief Clerk.

Mr. Manager DE ARMOND. Then I will refer again to that question. [To the witness.] Mr. McLellan, state what your conversation with Mr. Marsh was at his office about the manner of Judge Swayne. Repeat the answer to the question asked you last.—A. Just what I have stated? I told him that I thought Judge Swayne's manner was in keeping with the occasion.

Q. Then what else did you tell him?—A. I do not recollect the conversation at all.

Q. Did you not say a moment ago that you told him that Judge Swayne's manner, you thought, was unnecessarily harsh, or severe, or something to that effect?—A. I told him at one time, but I do not think it was on this occasion.

Q. When was it?

Mr. THURSTON. I object, Mr. President, to going outside of the one occasion.

Q. (By Mr. Manager DE ARMOND.) Was it in one of these conversations about which you have been asked?—A. I do not think so.

Q. Do you recall anything else that you told Mr. Marsh in that conversation at his office?—A. No, sir; my mind is not clear on it.

Q. What did you mean when you said to Mr. Marsh that you thought his language was in keeping with the occasion?—A. Well, at that time I thought that Judge Swayne did just what was right.

Q. Was that before you referred to the newspaper article to refresh your recollection?—A. Yes, sir. He showed me the articles reproduced in the Congressional Record of January 13, I believe.

Q. Who did?—A. Mr. Marsh.

Q. When?—A. At his office during one conversation. I do not remember what date.

Q. Do you mean to be understood as saying that you told Mr. Marsh that Judge Swayne's language was not harsh or abusive?—A. I told him I thought it was not.

Q. Well, you stated yesterday that you thought it was?—A. After refreshing my memory—

Q. And that is the explanation of the matter?—A. Yes, sir.

Mr. Manager DE ARMOND. That is all.

Reexamined by Mr. THURSTON:

Q. When did you refresh your memory?—A. After reading the article.

Q. And your memory is now refreshed?—A. I think so.

Mr. THURSTON. That is all.

The PRESIDING OFFICER. Are there any further questions?

Mr. Manager DE ARMOND. Not of this witness, Mr. President.

The PRESIDING OFFICER. Have the managers further witnesses to produce?

Mr. Manager DE ARMOND. We wish to recall Charles M. Coston.

CHARLES M. COSTON recalled.

By Mr. Manager DE ARMOND:

Q. You stated when you were on the stand before that you lived in Pensacola and that you are by profession a lawyer?—A. I did, sir.

Q. State to the court whether you were present in Judge Swayne's court on the morning of the 12th of November, 1901, when contempt proceedings against Davis and Belden were heard and disposed of.—A. I was.

Q. State to the court, as well as you recall, what took place in connection with that matter at that time?—A. As near as I can now remember, I think that I can describe what took place in the following language: The court convened, I believe, at 10 o'clock. Immediately upon the convening of the court the Belden and Davis contempt proceeding was called up. The case, after the evidence was heard, which was brief in nature, was presented by Mr. W. A. Blount for the prosecution and E. T. Davis for the defense.

Judge Belden at the time was in a very decrepit condition physically. His face was paralyzed, which interfered very materially with his speech. He was also apparently very feeble. He therefore had nothing to say in the case. Immediately after the arguments pro and con were concluded, the judge proceeded to sentence the parties defendant. I can not recall the exact language employed by the judge. I will, however, try to state the substance, as I remember it. He spoke in connection with a case that had been pending in his court in which these attorneys were interested. He did not mention the case by name; but his statements, taken in connection with other facts, thoroughly convinced me that he had reference to the case of *Florida McGuire v. W. A. Blount* and others. He stated that the lawyers in this case, meaning Belden and Davis and Paquet, they being the parties appearing for the plaintiff, had been guilty of conduct that was a stench in the nostrils of the people, as near as I could remember his language. He also stated that the sentencing of Judge Belden was one of the saddest duties that he had had to perform during his time upon the bench; but he stated in this connection, however, that his duty had to be performed; that the conduct of Judge Belden was very reprehensible; that his experience as an attorney should have taught him that he was guilty of a violation of duty when he brought the proceeding in the circuit court. He said nothing in reference to Davis.

I noticed in this proceeding, it being a novel one to me, that the Judge, in rendering his decision, showed a great deal of personal feeling in the matter—in fact, it may be aptly described as personal feel-

ing. His sarcasm was biting; his censure of these two attorneys was severe in the extreme. In fact, he seemed to me to display more personal feeling in this case against them than I have ever seen him display in any case before his court.

Q. Do you recall anything else that he said?—A. In what connection?

Q. In disposing of this case—in passing sentence.—A. I can recall the sentence, if that is what you have reference to.

Q. No; as to his manner and his expressions, if you recall anything further.—A. No, sir; I think I have described them, except as I have said, that he was sarcastic.

Q. Do you recollect what sentence he pronounced?—A. Yes, sir.

Q. What was it?—A. A hundred dollars fine or ten days in jail, and to be suspended or disbarred for a period of two years.

Q. You say "or ten days in jail?"—A. That is the way I understood the sentence.

Q. How speedily was the sentence executed?—A. Immediately after the sentence was pronounced Mr. Davis and Judge Belden left, accompanied by an officer of the court. I do not remember whether it was the United States marshal or a deputy.

Q. Where were they taken?—A. I presume to the county jail.

Q. Did you see them there?—A. I did.

Q. How soon after this?—A. I suppose about two hours afterwards.

Q. Well, where were they in the county jail?—A. They were in a room next to what they call "the prisoner department of the jail." This jail is a brick building, two stories in height. There is an entrance—

Mr. THURSTON. Mr. President, is Judge Swayne, this respondent, to be answerable for the manner in which the imprisonment was conducted in the absence of any testimony tending to show that he gave any directions with respect to it? If not, we object to this feature of the testimony.

Mr. Manager DE ARMOND. Mr. President, the object of the inquiry was to ascertain where they were confined and how they were confined—something about the jail and the accommodations, or the lack of accommodations, that they had in the jail, in a general way, and the punishment that they endured under this sentence of the court.

Mr. THURSTON. Mr. President—

The PRESIDING OFFICER. One moment. Does the manager think that is material to the issue?

Mr. Manager DE ARMOND. I did not understand the remark.

The PRESIDING OFFICER. Does the manager claim that that is material to the issue—the jail accommodations?

Mr. Manager DE ARMOND. Not "the jail accommodations," used just exactly in that way, but we think it is material to the issue to show what the punishment inflicted upon them was, and to leave the court, in passing upon the matter with all the testimony upon the subject before the court, to determine how far the judge knew that such accommodations or lack of accommodations would be their lot in sentencing them, whether it was a proper sentence as to the amount of punishment or whether it was excessive. We are getting at the animus of the judge.

Mr. THURSTON. I simply wish to suggest that it passes the bounds of responsibility that could be placed upon this respondent to charge

him with improper performance of duty because of the fact that the people of Pensacola may have provided inferior jail accommodations.

The PRESIDING OFFICER. The Presiding Officer does not see that the question as to the character of the jail or the way in which the persons sentenced for contempt were confined there is proper. It can not be said that Judge Swayne is responsible for that without some evidence is adduced showing that the Judge directed something to be done which was improper.

Mr. Manager DE ARMOND. I wish to ask another question of the witness upon that line; but if the President will indulge me a moment, I think upon the question whether the sentences were excessive or not—as to that branch of it—it would be competent for the respondent to show, if he could show, that the imprisonment was not for an unusually long time; that the punishment was not excessive if, as a matter of fact, the persons sentenced to the jail were taken to quarters which were commodious and clean and if there were no especially contaminating influences from the low class of criminals confined in the same jail at the same time; if they were the only occupants, for instance, and were in the rooms or apartments of the sheriff or keeper of the jail, instead of being in with the common criminals—I believe that would be competent for the respondent to offer in the case. It seems to me it is competent for those prosecuting the case to show the kind of confinement, the kind of place to which he sentenced them, bearing upon the question whether he had the right to send them there at all, and whether the punishment was excessive in sending them there for that length of time. That is all I wish to say about that.

For information, I ask the President whether I am to understand the ruling to be that all questions in regard to the jail are to be excluded? I do not wish to ask questions simply for the sake of asking them, of course.

The PRESIDING OFFICER. The Presiding Officer thinks that it is not material to this issue to prove the condition of the jail. If any Senator so desires, the Presiding Officer will submit the question to the Senate.

Mr. Manager DE ARMOND (to counsel for the respondent). Cross-examine.

Cross-examined by Mr. THURSTON:

Q. You were present during the entire hearing of that contempt proceeding?—A. I was, sir.

Q. Did you hear read the information or petition, or whatever it may be called, that was filed by Mr. Blount?—A. I am of the opinion that I did. That is my recollection.

Q. And the defendants, Belden and Davis, put in their answer?—A. That is the way I remember it.

Q. And that was also read, was it?—A. It was.

Q. Was it sworn to?—A. That I can not say, not having read it.

Q. You can not say that?—A. I did not read it.

Q. Did the attorneys on both sides have all the opportunity they asked for in the way of argument?—A. Well, you ask me for my opinion?

Q. No; I ask you if they were deprived by any ruling of the court. Were they cut off from any argument?—A. Not to my knowledge.

Q. Were they refused the right to call witnesses?—A. Not to my knowledge.

Q. Did either of them, Belden or Davis, offer to take the stand in their own behalf?—A. That I can not say.

Q. Were they both sworn as witnesses?—A. Not that I recall.

Q. Was any attempt made there, so far as you remember, by either of them to purge themselves under oath of the charge made against them?—A. I think there was.

Q. What was it?—A. Their answer.

Q. Was that under oath?—A. I can not recall.

Q. I say to you "under oath?"—A. You mean was the answer under oath?

Q. No, sir; I say was any attempt made by either Belden or Davis in that court to purge themselves of the charge under their oaths?—A. Not that I can recall.

Q. And if it is the fact that the answer they submitted was not under oath, they did not make any attempt to purge themselves under oath, did they?—A. That is a fair conclusion, I believe.

Mr. THURSTON. That is all.

Reexamined by Mr. Manager DE ARMOND.

Q. You state that these gentlemen were taken off to jail immediately after the pronouncing of the sentence?—A. That is as I remember it. They were.

Q. Do you know anything about any delay in making up the commitment?—A. None whatever.

Q. Do you know whether there was any commitment?—A. I can not say of my own knowledge that there was. I did not see the original.

Mr. SPOONER. Mr. President, I submit the question which I send to the desk.

The PRESIDING OFFICER. The Senator from Wisconsin propounds a question, which will be read by the Secretary.

The Secretary read as follows:

Q. About how much time was consumed by Judge Swayne in his observations in the case, including the judgment?

A. I do not know that I clearly understand the question.

The Secretary again read the question.

A. At this time it is almost impossible to say positively the exact time, this trial having taken place in November, 1901, as I remember it; but, relying upon my judgment and approximating the time, I would say that he spoke, I imagine, about twenty or twenty-five minutes. That, however, is merely a guess.

Mr. SPOONER. Well, Mr. President, my question was "about how much time.

A. Then I will answer the question in this way: About twenty or twenty-five minutes, as I recollect it.

Q. (By Mr. Manager DE ARMOND.) There were witnesses examined in that proceeding?—A. There were.

Q. Can you tell what the testimony was?—A. I can not recall all the testimony, but the substance of the testimony, as I remember it, had reference to a newspaper article and the summons that was served in the case brought against Judge Swayne in the circuit court of Escambia County, Fla.

Q. You stated that there was first pronounced the sentence of imprisonment. Did anybody make any suggestion to the judge in

regard to the disbarment?—A. Immediately after the decision, when judgment was rendered, Mr. W. A. Blount, of counsel for the prosecution, walked up to the judge. What he said to him I do not know; I could not hear it; but immediately upon Mr. Blount concluding what he was saying to the judge, the judge then struck out that part of the sentence in relation to disbarment.

Mr. Manager DE ARMOND. That is all.

Mr. THURSTON. That is all.

The PRESIDING OFFICER. Are there further witnesses?

Mr. Manager DE ARMOND. Mr. President, the witness Belden, of New Orleans, has not yet arrived, and with the exception of that one witness, so far as we know now, our case is complete, and we are willing that the respondent may go on with his testimony, with the privilege to us of calling General Belden when he arrives.

Mr. THURSTON. Mr. President, this suggestion was made to me this morning by the managers, and we have no objection to their proposed arrangement, it being, as I understand, that they have closed their case in chief, except as to the testimony of Judge Belden, who is to be produced by them and examined upon his arrival. We make no objection to that request. We should like, however, that they place Judge Belden upon the stand as soon as he does arrive, in order that, as far as possible we may have their entire case in before we present our own witnesses.

The PRESIDING OFFICER. Will that be agreeable to the managers?

Mr. Manager DE ARMOND. Mr. President, I wish to say just one other thing. But for the ruling of the court the other day we would now formally offer to introduce the declarations and statements of Judge Swayne bearing upon these matters of contempt and bearing also upon the residence question; but not wishing to ask the court to make another ruling upon that proposition—

Mr. BAILEY. Mr. President, I hope the managers on the part of the House will offer that testimony again, because I should like to see the Senate determine it after due deliberation. If the managers have any delicacy about asking the Senate to reconsider its opinion, I myself will seek an opportunity of obtaining what I believe to be a more correct decision upon that point.

Mr. Manager DE ARMOND. Mr. President, I would say that what I have just remarked is in entire good faith; that it was the intention of the managers to offer the declarations and statements of Judge Swayne both with regard to these matters of contempt and the question of nonresidence. We have not these things in the exact form now that we should like to offer them, but we can assure the court if given the opportunity we shall present them, and also, as suggested by my associate, upon the matter of the use of the private car.

Mr. THURSTON. Do I understand the manager in his offer to include anything more than the testimony given by Judge Swayne before the committee of the House of Representatives?

Mr. Manager DE ARMOND. Testimony and statements, as I understand. I was not a member of that committee—

Mr. THURSTON. No. Call it what you please, we do not object, because we could not, to their introducing any statements made by Judge Swayne, except while he was a witness before the committee of the House.

Mr. Manager DE ARMOND. I was not a member of the examining committee, but I understand that a portion of the statements of Judge Swayne was made by him when not under oath; made voluntarily, with a view of checking or preventing the progress of the impeachment proceedings; that other statements were made by him after he had been sworn, sworn voluntarily, and at his own suggestion and in his own behalf, with a view of endeavoring to influence that committee by the statements and the testimony to report against the preferring of articles of impeachment, and with a view of influencing the House of Representatives against voting those articles of impeachment. Both classes we offer.

Mr. THURSTON. Mr. President, if it can be shown, and it appears of record, so that the showing is not difficult if it exists, that Judge Swayne made any statement before the House committee before the oath was administered to him by that committee as a witness, we shall interpose no objection to such statement. But we do object to any statement that he made before that committee after he was sworn as a witness.

Mr. BAILEY. Mr. President, I ask that the doors be closed for deliberation, if that is the proper proceeding. If not, I ask that the Senate retire to deliberate upon this question.

Mr. THURSTON. I ask the indulgence of the court for just one moment.

I do not desire to add anything to the argument I made the other day on this same question, except to call the attention of the Senate to one provision of the Constitution of the United States. It was urged here the other day that this is not a criminal proceeding, and that Judge Swayne is not charged with or being tried for a crime. I wish simply to call attention to a section of the Constitution, it being the last portion of section 2 of Article III. I read:

The trial of all crimes, except in cases of impeachment, shall be by jury.

The PRESIDING OFFICER. The Presiding Officer understands that the Senator from Texas moves that the Senate retire to its conference chamber. Is that the motion of the Senator from Texas?

Mr. BAILEY. That was my request, but it has been suggested to me that to save the inconvenience and delay of clearing the galleries the Senate itself retire to the Marble Room. But from all around me comes the suggestion that there is not room in the Marble Room for it, and consequently there is nothing left except to clear the galleries and close the doors.

Mr. SCOTT. On that I ask for a yea and nay vote.

Mr. BAILEY. In response to the call for a yea and nay vote, I will say that I think any Senator probably is entitled, upon his own suggestion, to a session with closed doors. I am not familiar with the rule, but I am inclined to think that is true.

The PRESIDING OFFICER. The Presiding Officer thinks sufficient accommodations for the Senate have been provided or can be provided in the Marble Room.

Mr. BAILEY. Then, to obviate the difficulty, if it is competent and permissible, I will ask unanimous consent that the Senate proceed, as if in executive session, to consider the question here, without closing the doors or clearing the galleries. If that is permissible, I prefer that request.

Mr. BACON. Rule XXIII provides for that, with the consent of the Senate.

The PRESIDING OFFICER. The Presiding Officer did not hear the suggestion of the Senator from Georgia.

Mr. BACON. I say Rule XXIII provides for the consent of the Senate under such circumstances.

The PRESIDING OFFICER. Consent to what?

Mr. BACON. As to the competency of the Senate to determine by unanimous consent to proceed without having the doors closed.

The PRESIDING OFFICER. The rule is as follows:

All the orders and decisions shall be made and had by yeas and nays, which shall be entered on the record, and without debate, subject, however, to the operation of Rule VII, except when the doors shall be closed for deliberation, and in that case no member shall speak more than once on one question, and for not more than ten minutes on an interlocutory question, and for not more than fifteen minutes on the final question, unless by consent of the Senate, to be had without debate.

The Presiding Officer is of opinion that the consent of the Senate applies to the time during which a Senator may speak upon a question, and not to the question whether the Senate may proceed in the Senate Chamber as a court without closing the doors.

Mr. BACON. I may be in error, but I thought it qualified the whole section. But if not, there is no doubt that unanimous consent will control.

Mr. BAILEY. Unanimous consent controls all rules, including that.

The PRESIDING OFFICER. The Senator from Texas asks unanimous consent that Rule XXIII may be suspended in so far that debate upon this question may take place in the Senate Chamber.

Mr. SCOTT. I object.

The PRESIDING OFFICER. Objection is made.

Mr. BAILEY. Then I ask that the Senate retire for the purpose of deliberating upon this question.

The PRESIDING OFFICER. The Senator from Texas asks that the Senate retire to its conference chamber for the purpose of deliberating on this question.

Mr. BAILEY. I understood, when I asked that the Senate retire, that that meant to close the doors of the Senate. That is my request, because Senators all agree that it would be inconvenient to consider the question in the Marble Room.

The PRESIDING OFFICER. The Presiding Officer will submit the motion to the Senate. Will the Senate order the doors to be closed for the purpose of deliberating upon the question? [Putting the question.] In the opinion of the Presiding Officer the "noes" have it.

Mr. BAILEY. I ask for the yeas and nays.

Mr. ALLISON. As I understand the rule just read, the deliberations are to be secret; they are not to be in the open Senate. I suggest that it will be greatly to the convenience of Senators and hasten the final conclusion of this trial that the deliberations shall be with closed and not with open doors. But I have no motion to make about it.

Mr. BAILEY. I have made a motion that the doors of the Senate be closed, so that the Senate may proceed to the consideration of this question. That motion was submitted to the Senate.

Mr. ALLISON. I understand.

Mr. BAILEY. And on it I have asked for the yeas and nays.

The PRESIDING OFFICER. The Senator from Texas asks for the yeas and nays. Is there a second?

The yeas and nays were ordered.

Mr. TELLER. I desire to say that under the rules all these decisions must be made by yeas and nays. They can not be made by a viva voce vote.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Texas, on which the yeas and nays have been ordered.

The question having been taken by yeas and nays, resulted—yeas 53, nays 18, as follows:

Yeas—Allison, Ankeny, Bacon, Bailey, Bard, Bate, Berry, Blackburn, Burrows, Carmack, Clark of Montana, Clark of Wyoming, Clarke of Arkansas, Clay, Culberson, Cullom, Daniel, Dillingham, Dryden, Dubois, Fairbanks, Foraker, Foster of Louisiana, Foster of Washington, Fulton, Gibson, Hale, Heyburn, Kean, Kearns, Kittredge, Latimer, Long, McCreary, McEnery, McLaurin, Mallory, Martin, Money, Morgan, Nelson, Overman, Patterson, Pettus, Platt of New York, Quarles, Simmons, Smoot, Spooner, Stone, Taliaferro, Teller, and Wetmore—53.

Nays—Alger, Allee, Ball, Beveridge, Burnham, Dick, Dolliver, Frye, Gallinger, Gamble, Hansbrough, Hopkins, McComas, McCumber, Millard, Perkins, Scott, and Warren—18.

Not voting—Clapp, Cockrell, Crane, Depew, Dietrich, Elkins, Gorman, Knox, Lodge, Newlands, Penrose, Platt, of Connecticut, Proctor, and Stewart—14.

The PRESIDING OFFICER. On the motion of the Senator from Texas that the doors be closed the yeas were 53 and the nays 18. The Sergeant-at-Arms will clear the galleries and close the doors.

Mr. CULBERSON. Before that order is carried out, I desire to ask that the managers on the part of the House state the proposition as submitted by them. The manager who conducted the examination of the last witness stated that he was not then prepared to submit the matter in proper form. We would like to have it; at least I would.

Mr. SPOONER. I suppose the offer of the managers upon which this question arises is in writing. The stenographer's notes will show precisely what the offer is.

Mr. BAILEY. It is in the record.

Mr. SPOONER. I ask that it be read.

Mr. BAILEY. I suggest that several days ago the managers of the House submitted their offer, and I think in writing. The record of that day's proceedings will show exactly what it is they want to introduce.

Mr. SPOONER. That proposition—

Mr. CULBERSON. My colleague—

The PRESIDING OFFICER. Debate is irregular at this time.

Mr. SPOONER. It is not a debate.

Mr. CULBERSON. It is not a debate. It is a request to know what the question is. Mr. Manager De Armond stated distinctly that he was not prepared to present in due form at that time the proposition on the part of the managers. What we desire—what I desire, at least, as one of the persons to pass upon this question—is to know what the proposition is.

Mr. HOPKINS. Counsel for respondent stated distinctly to the court that they made no objection to any statement made by Judge Swayne relating to his residence or any other subject. The point they made was that whatever statements he made before the investigating committee of the House after the oath was administered to him were subject to be excluded under the statute of the United States; and that is the proposition before us.

Mr. TELLER. I rise to a point of order. It is that no business can be done in open Senate after the vote the result of which has been announced.

The PRESIDING OFFICER. The Sergeant-at-Arms will clear the galleries and close the doors.

The managers on the part of the House and the respondent and his counsel retired from the Chamber.

The Senate sitting as a court of impeachment thereupon proceeded to deliberate with closed doors; and after two hours and twenty-five minutes (at 5 o'clock and 30 minutes p. m.) took a recess until tomorrow, February 17, at 11 o'clock a. m.

IN THE SENATE, *February 17, 1905.*

The PRESIDENT pro tempore (at 2 o'clock p. m.). The hour to which the Senate sitting as a court of impeachment adjourned has arrived. The Senator from Connecticut will please take the chair.

Mr. PLATT, of Connecticut, assumed the chair.

The PRESIDING OFFICER (Mr. PLATT, of Connecticut). The Senate is now sitting for the trial of the impeachment of Charles Swayne, judge in and for the northern district of Florida. The Sergeant-at-Arms will make proclamation.

The Sergeant-at-Arms made the usual proclamation.

The PRESIDING OFFICER. The Sergeant-at-Arms will see if the managers on the part of the House are in attendance.

The managers on the part of the House (with the exception of Mr. Smith, of Kentucky) appeared and were conducted to the seats assigned them.

The PRESIDING OFFICER. The Sergeant-at-Arms will also see if counsel are in attendance.

The respondent, Judge Charles Swayne, accompanied by his counsel, Mr. Higgins and Mr. Thurston, entered the Chamber and took the seats assigned them.

The PRESIDING OFFICER. The Journal of the last trial day will be read.

The Journal of the proceedings of the Senate sitting for the trial of the impeachment for February 16 was read.

Mr. HALE. Mr. President, the consideration of the subject for which the court went into private session had not been completed when the hour of 12 arrived. Perhaps it may be as well to go on for the present with testimony, but at no late date, of course, that session should be resumed. I do not ask that it be resumed now.

Mr. Manager CLAYTON. Mr. President, Mr. Manager Smith, of Kentucky, has requested me to say to the court that he is unable to attend to-day's session on account of sickness.

The PRESIDING OFFICER. Are the managers ready to proceed with witnesses?

Mr. Manager PALMER. Mr. President, we are ready to proceed. I call Mr. Belden.

SIMEON BELDEN sworn and examined.

By Mr. Manager DE ARMOND:

Q. Where do you live?—A. In New Orleans, La.

The PRESIDING OFFICER. The Presiding Officer suggests that it may be better to have the Secretary repeat the answers, so that they can be heard. If there is no objection, that course will be pursued.

Mr. SPOONER. I ask unanimous consent that the witness may be seated while giving his testimony.

The PRESIDING OFFICER. If there be no objection, the witness will be allowed to be seated and the Secretary will repeat his answers as given to the questions propounded.

The answers of the witness were repeated by the Chief Clerk.

Q. (By Mr. Manager DE ARMOND.) Perhaps I may as well repeat the question already asked. Where do you live?—A. New Orleans, La.

Q. How long have you lived in Louisiana?—A. All my life.

Q. What is your age?—A. I am 72.

Q. What official position have you held in that State, if any?—A. I have only held two. I was attorney-general of the State; was a member of the legislature, and speaker of the house.

Q. When were you elected attorney-general?—A. In 1868.

Q. When were you speaker of the house?—A. In 1864 and 1865.

Q. Who was elected governor when you were elected attorney-general?—A. Governor Henry Clay Warmoth.

Q. State what other connection, if any, you have had with the politics and business of the State.—A. I have held no official position except those two.

Q. State whether you have taken part in the public affairs of the State, political or otherwise.—A. Well, I have.

Q. State something about what part you have taken. Give a general sketch of your life in regard to these matters.—A. I was elected as a Republican to both positions that I have mentioned.

Q. State what, if anything, you had to do with the organization of parties and the conduct of politics or of public affairs there.—A. Well, I helped to organize the Republican party in that State before the death of Mr. Lincoln.

Q. How long have you been practicing law?—A. Let me see; I was admitted to the bar on the 10th of February, 1856.

Q. Were you one of the attorneys for the plaintiff in the case of Florida McGuire against the Pensacola City Company and others?—A. Yes, sir.

Q. The case pending in the district court of the northern district of Florida?—A. Yes, sir.

Q. When did you reach Pensacola in November, 1901, to attend court?—A. I reached Pensacola—I do not know the date—in the spring of 1901.

Q. I mean with reference to the term of court in November, 1901.—A. Well, I reached Pensacola on the 8th of November.

Q. State what the condition of your health was.—A. I was paralyzed in the right face and eye.

Q. State whether you had been afflicted for some time.—A. Since September previous to that.

Q. State to the court whether you went to Pensacola as one of the attorneys in the Florida McGuire case upon that occasion.—A. I did. I went there simply to consult with Mr. Paquet, who was leading attorney in the case.

Q. State to the court when that case was called.—A. The case was called on the 9th of November, about 5 or 6 o'clock in the evening.

Q. Had it been set down for trial upon a particular day?—A. It had not. I will state in that connection that the time of the court was occupied by the criminal calendar of the court until about 5 o'clock the evening of the 9th.

Q. State what was done then with reference to that case or what was said.—A. The case was called. Judge Paquet requested the court to fix it for the following Thursday, because no date had been fixed for the trial of the case to which witnesses could be subpoenaed.

Q. State whether or not that was done.—A. It was not. We were peremptorily ordered to proceed with the trial. After some discussion on the part of Mr. Paquet the judge said it might go over until Monday morning at 10 o'clock, when it must be tried.

Q. State to the court whether or not you could get ready for trial at that time—the next Monday.—A. We stated we could not; that there were more than forty witnesses in Pensacola and the surrounding country and some outside of the State; that we could get them there by Thursday; that it was utterly impossible for the clerk and the marshal, from 5 o'clock in the evening, to get the summonses ready and serve them on time for Monday.

Q. State what, if anything, you and Mr. Paquet, as attorneys for Florida McGuire, decided to do with respect to that case in Judge Swayne's court, in view of the fact that you had been ordered to go to trial on Monday and could not.—A. We immediately met at the hotel I was stopping at, and concluded to discontinue the case to avoid a defeat. During that evening or Monday morning a motion was made to discontinue the suit. At 10 o'clock on Monday, the 11th of November, Mr. Davis, at my request and that of Judge Paquet, who had left town, presented the motion to the judge, who read it and asked Mr. Blount, the attorney opposed to us, if he had any objections to the discontinuance. He held the paper a short time and suggested some amendment, which was compiled with, because we feared that it would not be allowed. The judge ordered it discontinued, and it was done.

Q. You spoke of deciding to dismiss the case to avoid defeat?—A. Yes, sir.

Q. On what ground did you anticipate defeat?—A. We had no witnesses, and could not get them.

Q. Well, after having decided to discontinue the case, what decision, if any, did you arrive at with reference to the bringing of the suit against Judge Swayne?—A. Well, we had had the matter as to Judge Swayne's having purchased the ground in litigation before him under consideration for some time.

Q. You mean the entire parcel of land in litigation before him, or a portion of it?—A. A portion of it—what they term a lot in Pensacola, but it is a square of ground—square 91.

Q. After having decided to dismiss the case in Judge Swayne's court, what decision did you arrive at with reference to bringing a suit against

Judge Swayne?—A. Well, we concluded it was necessary; that it was our duty to institute this suit against him; and we came to this conclusion after a sober, candid consideration of the case. The Judge, as we believed and still believe, purchased the property from Mr. Charles Edgar, residing in New York. Charles Edgar was a defendant in the suit we discontinued; therefore we concluded that Judge Swayne, so far as Edgar was concerned, had taken Edgar's shoes, or his place, in the possession of the lot or square.

Q. About what time on the 9th—Saturday evening—was that suit brought?—A. I could not tell. I was in my room. Judge Paquet had charge of that.

Q. Was anything determined in consultation between you and Judge Paquet about whether or not the papers should be served that night?—A. I think the Judge told me that he intended to have them served that night.

Q. What was the reason for serving that night?—A. Well, Judge Swayne announced on the 9th that as soon as the case was concluded he expected to leave town, and in leaving town perhaps we would not be able to reach him for five or six months. Our object was to settle the question of title there in the State court as summarily as possible.

Q. The service, then, as I understand you, was made that night in order to insure service upon him by the earliest rule day?—A. Yes, sir; I had omitted to mention that. The return day in Florida is the first Monday in every month. Unless he had had fifteen clear days, it would have postponed the case until the first Monday in January, and we were anxious to have the question determined whether Judge Swayne had bought property or not before the spring term of the United States circuit court.

Q. State whether or not that suit in the State court was brought in good faith for the purpose of determining the matters involved in it.—A. Perfectly good faith. We had no motive whatever for doing a thing that was wrong. We concluded that Judge Swayne was as liable to be sued in his private capacity as any other man.

Mr. Manager DE ARMOND. Mr. President, I will ask the question of the other side whether they are prepared to produce a letter written to Judge Swayne in October preceding this November?

Mr. HIGGINS. Judge Swayne has not possession of that letter. He has never been able to find it.

Mr. Manager DE ARMOND (to the witness). I will ask you whether a letter was—

The PRESIDING OFFICER. The statement of counsel was not heard by the Presiding Officer.

Mr. HIGGINS. I stated that Judge Swayne has not possession of that letter; has not had it since this matter has been mooted, and does not know where it is.

Mr. Manager DE ARMOND. Then we shall endeavor to prove its contents substantially, if there be no objection. [To the witness.] I will ask you whether a letter was written to Judge Swayne in October, 1901?

The PRESIDING OFFICER. A letter written by whom?

Mr. Manager DE ARMOND. By the attorneys of Florida McGuire, calling to Judge Swayne's attention the matter of recusing himself in that case.

A. It must have been during the month of July, 1901, that we came into possession of what we considered to be the fact that Judge Swayne had purchased square 91. I wrote the letter, and Judge Paquet signed it with me. I think the letter is dated the 5th of August.

Q. Now state, as well as you can, the contents—but first, have you a copy of that letter?—A. I have not. I had, but it is misplaced. I tried to get it before I came up here.

Q. State to the court, as well as you can, the contents of that letter to Judge Swayne.—A. I wrote to the Judge at Guyencourt, Del., advising him of the information that had come to us and suggesting that if it were a fact no doubt he would recuse himself in the case, and that we desired to communicate with Judge Pardee, circuit judge of the fifth circuit, that he might assign to that court for the trial of the case some disinterested judge.

Q. Was any reply received from Judge Swayne?—A. The Judge paid no attention; no reply was ever seen.

Q. Who were the attorneys of Florida McGuire in that case in Judge Swayne's court?—A. Attorneys for which side?

Q. For Florida McGuire?—A. Judge Paquet and Simeon Belden.

Q. Was Mr. Davis an attorney?—A. Mr. Davis was never an attorney in that case, except in so far as to present the motion to discontinue it, and that was an accommodation to Judge Paquet and myself.

Q. Who prepared the papers in the case brought against Judge Swayne, so far as you know?—A. Judge Paquet. I was sick at the hotel. I do not know who prepared them, but I think Judge Paquet.

Q. Now, you have told about the dismissal of the Florida McGuire case. Immediately following that dismissal what happened in Judge Swayne's court?—A. Mr. Blount, one of the defendants in the discontinued suit and counsel for all of the defendants therein, arose as *amicus curiæ* and suggested to Judge Swayne that we should be punished for contempt. Judge Swayne very promptly ordered it to be done. We were then notified to appear the next day—the 12th of November—to answer the charge of contempt.

Q. You appeared upon the 12th day—Tuesday?—A. Yes, sir.

Q. What took place upon your appearance?—A. Well, a form of trial for a few minutes was gone into.

Q. State to the court now what you recollect about that trial. What was done, and what was said?—A. Well, the trial lasted but a short time.

Q. About how long?—A. I should say thirty or forty minutes, perhaps longer.

Q. When the proceeding was started was a paper filed—was a written charge made, or was it made first orally?—A. My recollection is it was made orally, but during the evening late we were served with a written notice embodying the charges.

Q. Were any interrogatories exhibited to you upon the 12th—were you asked to answer any interrogatories?—A. We were not.

Q. Did the charge against you appear to be sworn to or supported by affidavit?—A. It was not.

Q. Was your answer upon oath?—A. I do not think that that was either, because, as the charges were not sworn to, we did not think it necessary that we swear to our answer.

Q. To what points did the witnesses testify; what matters were they inquired of about?—A. Well, as to myself, there was no inquiry

further than to ascertain if I had signed the process, which I admitted that I had signed. There were some things said about a newspaper article, but I knew nothing of it, and so stated to the judge.

Q. Was any inquiry made of Mr. Davis about that newspaper article?—A. Yes; there was. Judge Swayne handed this writing to him, and asked him if he would swear on oath that he did not write it. Mr. Davis replied that he would.

Q. What further testimony do you recollect?—A. Well, I will state in connection with this matter that after the Judge entertained the suggestion of this *amicus curiæ* he appointed Mr. Blount and Mr. Fisher attorneys to prosecute us, and both of these parties were leading defendants in the suit that was discontinued. The United States district attorney was present, but took no part, as he had been supplanted by this appointment of the two men named. After the conclusion of the trial Judge Swane very promptly began the sentence. We were sentenced to pay a hundred dollars fine, ten days imprisonment in the county jail, and disbarment from practice in that State in his court for two years. A few minutes after that he revoked the order as to the disbarment. We then sued out a writ of habeas corpus before the circuit judge, Judge Pardee, who decided that he had no jurisdiction over the case, except in so far as to make it conform to the law; that is to say, that Judge Swayne had both fined and imprisoned contrary to law. Judge Pardee left it discretionary, therefore, with me and Mr. Davis as to whether we should pay the fine or go to prison. As I had already served part of the time in prison and felt that it would be wrong to pay the money, I selected imprisonment.

Q. Why did you think it would be wrong to pay the money?—A. Because I was satisfied, and very thoroughly satisfied, that I had committed no offense for which I should be punished for contempt. I could avoid the payment of the \$100 by serving the balance of the term, having already served about one-half the time.

Q. How soon after the sentence was pronounced were you taken to jail?—A. Immediately.

Q. What was the manner of Judge Swayne in pronouncing sentence?—A. Well, he was very abusive. I could not state exactly all that he said. He denounced us as ignorant; that we had disgraced the profession of the law, and that our conduct was a stench in the nostrils of the people there, and especially of the bar. After that he began the abuse of Mr. Keyser, who was a witness in the contempt case, by calling him a perjurer.

Q. State what Judge Swayne's appearance and manner were with reference to being angry or under the influence of high feeling.—A. Oh, extremely so.

Q. Do I understand "extremely angry"?—A. Yes; extremely angry, if his demonstrations indicated anger.

Q. State to the court whether, in anything that you had done in relation to either of these suits or in connection with any matter pending in his court, you had done anything or thought anything with the intention of bringing the court into contempt or wounding or hurting the feelings of the judge.—A. Not the least idea. I have always made it my practice during the number of years I have been at the bar to demean myself as a court of justice demands. I have never in my life failed to observe that rule. I did it before Judge Swayne, and it is

the first time in the course of my practice that my competency or my integrity as a citizen and lawyer has ever been drawn in question.

Q. You stated there was reference made to a paper or notice or article that appeared in a newspaper?—A. Yes, sir.

Q. And that you disclaimed having written it. You made that statement in court during the hearing of this contempt proceeding. Now, state to the court whether you have any knowledge about who wrote it or placed it in the newspaper.—A. Not the most distant. The first thing I knew of it was on the following morning, the 13th, when I read it in the Pensacola Press. I regretted very much to see it there, even with the injustice that I thought Judge Swayne had done me. I regretted to see the publication of this suit in the paper and characterized it as very indiscreet.

Mr. Manager DE ARMOND. I believe that is all.

Cross-examined by Mr. THURSTON:

Q. Mr. Belden, at the time you have referred to you were an attorney of and practicing in the United States court for the northern district of Florida?—A. Yes, sir, and had been for some years, at intervals.

Q. Is that also true as to Mr. Paquet?—A. I think not. I think that was the first appearance of Judge Paquet in that State.

Q. Judge Paquet, however, was an attorney of record in that case, was he not?—A. Yes, sir.

Q. And you were associated with him in the Florida McGuire case?—A. Yes, sir.

Q. How long had you been connected with the litigation that had been going on with reference to the title to this large tract of property in Pensacola?—A. I was in Pensacola in 1884 and tried a case involving the title to this same property. The case went to the Supreme Court of the United States and was returned to the city of Pensacola; the judgment reversed and the case sent back. Since that time that particular suit has never been revived or tried. I did not return to Pensacola then for some six or seven or eight years.

Q. That first suit you have spoken of was in 1884?—A. In 1884; yes.

Q. Were further suits brought from time to time in connection with this same tract of land, to determine its title?—A. Not by me; I only know that certain litigation was going on continuously.

Q. And you had naturally advised yourself of it before you commenced the Florida McGuire case, had you not?—A. I had availed myself of the knowledge I had acquired in 1884, of course.

Q. Had you not also advised yourself or informed yourself as to the subsequent litigation before the time when you commenced the Florida McGuire case?—A. I had not, as I understood the litigation was in the circuit court of the State.

Q. Did you not know that the same case, perhaps with other parties plaintiff, had been tried in Judge Swayne's court before a jury between 1884 and 1901?—A. I do not know positively. There is a case I heard mentioned while we had this Florida McGuire case, and I have looked at the record. It was the case of *Mr. Larvalette v. The City Company* and others.

Q. Do you know how many trials there had been in all the courts of this same claim to the title of that tract of real estate?—A. I know of the suit that was brought in 1884 and, incidentally, the *Larvalette* suit,

and the suit that I brought, *Florida McGuire v. W. A. Blount and others*.

Q. Generally speaking, you knew, did you not, that this litigation, in one form or another, had been going on pretty continuously for some years?—A. I have just stated what I had heard; it had been continuous.

Q. And there had been suits, had there not, as you had advised or informed yourself, both at law and in equity?—A. There was a suit brought in equity by Judge Paquet. I had no connection with that suit until the latter part, in filing the brief in the circuit court of appeals. There was no trial there. It went off on demurrer as to the jurisdiction of the court; in other words, the defendant claimed that it should have been at law instead of in equity. Then we filed the suit at law which is now pending.

Q. In briefing and arguing the equity case on appeal did you not inform yourself of the allegations contained in the bill?—A. Of course.

Q. And therefore you knew, did you not, that the complainant, *Florida McGuire*, in that bill in equity had taken exception to at least four or five judges, both of State and Federal courts, in connection with previous litigation?—A. I noticed it in the bill in equity. I had no hand whatever in drawing the bill.

Q. But you discovered, did you not, that in the prior litigation there had been at least four efforts made to induce various judges to recuse themselves on the trials?—A. I am not aware of that.

Q. Is that not set forth in the bill in equity in that case which you examined and briefed and argued?—A. I think there is a reference to some disqualified judges—to judges of State courts there.

Q. Prior to the November term, 1901, was your case of *Florida McGuire* against the defendants named at issue?—A. It was at issue at the fall term, the November term, but was not at the spring term.

Q. When did you send this letter to Judge Swayne asking him to recuse himself?—A. I think the date of the letter was the 5th of August, 1901.

Q. After that did you file any pleading in that court looking to the bringing on of the case for trial?—A. Not that I know of.

Q. Prior to November 8, 1901, you had on file, had you not, a demurrer to the answer?—A. It has been a long time; I can not recollect; perhaps we had; but it has been a long time now.

Q. But did you not about that date file in the court a paper reading as follows:

Now comes plaintiff in the above entitled and numbered cause, through her undersigned counsel, and hereby discontinue the demurrers heretofore filed herein to pleas of defendant.

SIMEON BELDEN.
LOUIS P. PAQUET.

A. I think that is correct.

Mr. Manager PALMER. I think the counsel ought to show this paper to the witness if he wants to examine him upon it.

The PRESIDING OFFICER. That would be the proper course; but the witness has already answered.

Mr. THURSTON. Certainly, if the witness wants to see it. But he has a recollection.

Mr. SPOONER. I ask that the question and also the answer may be repeated.

The PRESIDING OFFICER. The reporter will read the question and the answer.

The reporter read as follows:

Q. But did you not about that date file in the court a paper reading as follows:
"Now comes plaintiff in the above entitled and numbered cause, through her undersigned counsel, and hereby discontinues the demurrers heretofore filed herein to pleas of defendant.

"LOUIS P. PAQUET.
"SIMEON BELDEN."

A. I think that is correct.

Mr. FAIRBANKS. As there is a special order for 3 o'clock, I move that the Senate sitting as a court of impeachment adjourn until 11 o'clock to-morrow morning, to meet then with closed doors for further deliberation.

Mr. THURSTON. May I make an inquiry, so that counsel will understand what to expect? Does that mean that our appearance and proceeding in open session will go on at 2 o'clock?

Mr. FAIRBANKS. Yes; unless there is some further action by the Senate.

The PRESIDING OFFICER. The Presiding Officer so understands.

Mr. THURSTON. We will not be expected here before that time?

Mr. FAIRBANKS. No.

Mr. GALLINGER. There is a special order for to-morrow immediately after the routine morning business.

Mr. FAIRBANKS. There is a notice to such effect.

Mr. GALLINGER. A notice.

The PRESIDING OFFICER. The Senator from Indiana moves that the Senate sitting as a court of impeachment in the trial of Charles Swayne do now take a recess.

Mr. FAIRBANKS. I moved an adjournment until 11 o'clock to-morrow, but I will modify it. I move that the Senate sitting as a court of impeachment take a recess until 11 o'clock to-morrow morning.

The motion was agreed to; and (at 3 o'clock and 3 minutes p. m.) the Senate sitting as a court of impeachment took a recess until 11 o'clock a. m. February 18.

The managers on the part of the House and the respondent and his counsel thereupon retired from the Chamber.

IN THE SENATE, *February 20, 1905.*

The PRESIDENT pro tempore. The hour of 2 o'clock having arrived, to which the Senate sitting in the trial of the impeachment of Charles Swayne adjourned, the Senator from Connecticut will please take the chair.

Mr. PLATT, of Connecticut, assumed the chair.

The PRESIDING OFFICER (Mr. Platt, of Connecticut). The Senate is now sitting in the trial of the impeachment of Charles Swayne, judge of the United States in and for the northern district of Florida. The Sergeant-at-Arms will make proclamation.

The Sergeant-at-Arms made the usual proclamation.

The managers to conduct the impeachment on the part of the House of Representatives (with the exception of Messrs. Palmer, Powers, Perkins, and Smith) appeared and were conducted to the seats assigned them.

The respondent, Judge Charles Swayne, accompanied by his counsel, Mr. Higgins and Mr. Thurston, entered the Chamber and took the seats assigned them.

The PRESIDING OFFICER. Before the reading of the Journal the Presiding Officer will announce that at the last session of the Senate in the trial of the impeachment the question of evidence was decided, namely, the proposal of the managers to introduce statements by Judge Swayne made before the committee of the House of Representatives, and it was decided that such statements were inadmissible. The vote by which it was decided will appear upon the reading of the Journal.

The Secretary will read the Journal of the last trial day.

The Secretary read the Journal of the Senate sitting in the trial of the impeachment of Charles Swayne Friday, February 17.

The entry in the Journal referred to by the Presiding Officer is as follows:

The Presiding Officer stated the question to be: "Are the statements made by Judge Swayne before the committee of the House of Representatives admissible evidence?"

It was determined in the negative—yeas 29, nays 47.

On motion by Mr. Foraker, the yeas and nays being desired by one-fifth of the Senators present.

Those who voted in the affirmative are: Messrs. Allison, Bacon, Bailey, Bard, Bate, Berry, Blackburn, Carnack, Clay, Cockrell, Cullom, Daniel, Foster of Louisiana, Foster of Washington, Latimer, Long, McEnery, McLaurin, Mallory, Martin, Money, Morgan, Overman, Patterson, Simmons, Spooner, Stone, Taliaferro, and Teller.

Those who voted in the negative are Messrs. Alger, Allee, Ankeny, Ball, Beveridge, Burnham, Burrows, Clapp, Clark of Wyoming, Culberson, Depew, Dick, Dietrich, Dillingham, Dolliver, Dryden, Dubois, Elkins, Fairbanks, Foraker, Frye, Fulton, Gallinger, Gamble, Gibson, Gorman, Hale, Hansbrough, Heyburn, Hopkins, Kean, Kearns, Kittredge, Lodge, McComas, McCreary, McCumber, Millard, Nelson, Newlands, Perkins, Pettus, Quarles, Scott, Smoot, Stewart, and Wetmore.

So it was determined that the evidence was not admissible.

During the roll call Mr. McCreary stated that he was authorized by Mr. Clark, of Montana, to say that if he had been present he would have voted "nay."

Mr. Manager OLMSTED. Mr. President, I desire to announce the unavoidable absence to-day of Managers Palmer, Powers of Massachusetts, Perkins, and Smith, of Kentucky. We shall proceed as best we may in their absence, and by the courtesy of the honorable counsel for the respondent we desire to call one witness out of order to ask him about two questions—a witness who desires to depart.

ROBERT L. HENRY, sworn and examined.

By Mr. Manager OLMSTED:

Q. You reside in Waco, Tex., I think.—A. I do.

Q. Are you familiar with the location of the boarding house of Mrs. Downs, a witness who testified here?—A. I am.

Q. And also with the location of the court-house in which the United States courts are held?—A. I am.

Q. Will you state about the distance from one of those buildings to the other?—A. The Federal court-house is on the corner of Franklin and Fourth streets. Mrs. Downs lives about four blocks away, on the corner of Columbus and Fifth. You go north one block from the Federal building, then west one block along Austin avenue, and then north about two blocks to Mrs. Downs's residence.

Q. That is about three or four blocks?—A. A little over three. She lives in the fourth block.

Q. What is the character of the pavement between the two buildings—the walk?—A. It is a concrete sidewalk.

Q. A good pavement?—A. A good pavement.

Q. State whether you know Judge Swayne, by sight at least.—

A. Oh, yes; I know Judge Swayne by sight and am personally acquainted.

Q. You have seen him there at the time of holding court?—A. Yes, sir; I have seen Judge Swayne there in 1895 and 1896, I think it was. I have seen him holding court in Waco.

Q. At various times, when holding court there?—A. Various times, several times.

Q. State whether you have seen him going from one of those buildings to the other—going and returning.—A. I do not understand the question.

Q. State whether you have seen him going from the house of Mrs. Downs to the court-house or returning from the court-house to the house of Mrs. Downs.—A. I can answer the question in this way. My law office was in the same block as the Federal court building, and when court would take a recess or adjourn I have seen Judge Swayne emerge from the Federal building, walk up Fourth street toward his boarding house, and I have seen him coming from that direction about the time that court was to convene each day, when I have observed him. I do not pretend to say on what days, though, I saw him.

Q. I simply want to know, without taking up time, whether he rode or walked.—A. I have seen him walking; I have not seen him riding.

Mr. Manager OLMSTED. That is all.

No cross-examination.

SIMEON BELDEN recalled.

Cross-examination by Mr. THURSTON—continued.

Q. Mr. Belden, did I understand you to say that your letter, or the letter of yourself and Judge Paquet, suggesting that Judge Swayne recuse himself on the trial you have referred to, was mailed to him about August 5, 1901?—A. Well, I think so, but I am not certain about the date.

Q. Is your memory on that date now better than it was when you were examined as a witness before the House committee?—A. I think it is about the same.

Q. You remember the occasion of your having been before the House committee as a witness in re the proposed impeachment proceedings against Judge Swayne?—A. Yes, sir.

Q. And you were sworn and examined as a witness on one or more occasions?—A. On one occasion.

Q. On that occasion, while you were a witness, did you not state in your testimony under oath as follows: "Upon the 19th day of October Judge Paquet and myself addressed a letter to Judge Swayne requesting him to recuse himself?"—A. I might have so stated and might have been in error. If I did so state, that is an error.

Q. You wrote the letter earlier than that date?—A. Earlier than that date.

Q. Not hearing from that letter, what steps did you take, if anything, to bring your case on for trial—that is, the Florida McGuire case?—A. None whatever.

Q. Did you know the rule of the United States district court with reference to how a case shall be placed upon the trial docket for trial

at the forthcoming term of a court?—A. I do not know that I do recollect it.

Q. Did you ever familiarize yourself with rule 22 of the Rules of Practice of the United States Circuit and District Courts, Northern District of Florida, reading as follows:

TRIAL LIST:

22. Hereafter, on or before the first day of each and every term of court to which a jury may be summoned, notice shall be given to the clerk, by the parties or their counsel or attorneys, of their desire for a trial in each cause then pending on the law side of this court at or during said term of court, and thereupon it shall be the duty of the clerk to make a trial docket of all such cases, and no others will be docketed or called by the court or tried at the term except by consent.

A. I recollect the rule perfectly well. I did not have charge of the case. That was in the hands of Judge Paquet. I was sick.

Q. Having in view that rule of the court, did not yourself and Judge Paquet on the 28th day of October, 1901, join in the following notice of the docketing of case for trial or the assignment for trial, omitting the heading—

Mr. Manager DE ARMOND. Mr. President, would it not be well to show the paper to the witness before reading the contents of it?

Mr. THURSTON. If the witness has personal recollection there is no reason why I should show him the paper, Mr. President. If he has not, I will submit it to him.

Mr. Manager DE ARMOND. I do not see how he can tell whether he has any personal knowledge of it or not without seeing it; and to read it and then show it to him would not have anything to do with the question whether or not it ought to be read, it would seem to me.

The PRESIDING OFFICER. The Presiding Officer thinks the paper should be presented to the witness.

Mr. THURSTON (to the witness). Did yourself and Judge Paquet notice that case for trial at the term to commence on the 5th day of November, 1901?—A. I could not answer that, because I was in Pensacola at that time. I was sick.

Q. (Handing paper to witness.) Will you please examine the notice for trial, which I now hand you, and say if that was filed by Judge Paquet and yourself as attorneys in the Florida McGuire case?—A. Do you refer to the paper I have?

Q. I do.—A. I do not recollect this. I recognize the handwriting of Judge Paquet.

Q. Is that his signature attached to that paper?—A. Yes, sir.

Q. Is it your signature also attached with his?—A. I do not think it is. I think Judge Paquet wrote that also.

Q. As your associate, did he have authority to sign your name together with his own as counsel in the matter of these proceedings?—A. He had not—not that I recollect.

Mr. THURSTON (handing paper to Mr. Manager OLMSTED). As a part of our cross-examination we offer this paper in evidence.

Mr. Manager DE ARMOND. I suppose, Mr. President, that the regular way would be to offer the paper when the gentlemen are introducing their own testimony; but we are not very particular about it.

Mr. THURSTON. No, Mr. President, that suggestion was made the other day. If I understand evidence, a paper which is a legitimate part of the *res gestæ*, of the transaction upon which the witness was

examined in chief, may be offered when identified as a part of the cross-examination. We may never desire to present any case on our side, but we can not tell until we have the evidence on the other side in.

The PRESIDING OFFICER. The Presiding Officer thinks it can not be very important, and may be admitted as a part of the cross-examination.

Mr. Manager DE ARMOND. Mr. President, we do not want to be understood as conceding the proposition which the counsel for the respondent has just stated. The question of the admissibility of a paper is a question that will have to be determined when it is offered; and, of course, if a paper could be introduced as a matter of cross-examination, the question of its competency could not be considered, or there would have to be delay to consider the admissibility of something offered by the opposite side when we are offering our testimony. But as to this paper, and only as to this paper, we do not care.

The PRESIDING OFFICER. The Presiding Officer understands it is offered merely as a part of the cross-examination.

Mr. THURSTON. That is all.

The PRESIDING OFFICER. Whether it becomes admissible or pertinent in any other view of the case is a matter to be determined afterwards.

Mr. THURSTON. We will ask the Secretary to read this paper. With the permission of the Senate, we will ask to retain the original, as it is a part of the record of the court, but substitute in the record a certified copy. I suppose there is no objection to that.

Mr. Manager DE ARMOND and Mr. Manager CLAYTON. There is no objection.

The PRESIDING OFFICER. The Secretary will read:

The Secretary read as follows:

[Law No. 72, in the United States circuit court for the northern district of Florida. Mrs. Florida McGuire v. Pensacola City Company et al.]

Hon. F. W. MARSH,

Clerk United States Circuit Court, Northern District of Florida.

DEAR SIR: Please enter the above cause on trial or call docket for trial at the coming term of court.

LOUIS P. PAQUET,
SIMEON BELDEN,
Attorneys for Plaintiff.

PENSACOLA, FLA., October 28, 1901.

Mr. THURSTON. Read the indorsement on the back of the paper.

The Secretary read as follows:

Florida McGuire v. Pensacola City Company et al. Præcipe for docketing filed at —, October 25, 1901. F. W. Marsh, Clerk.

Q. (By Mr. THURSTON.) Mr. Belden, it is your understanding, is it not, that under the rule I read, when this notice of trial was filed by Judge Paquet and yourself, you placed at your own solicitation that case upon the trial docket of the court for the term commencing November 5, 1901?—A. Undoubtedly.

Q. That was some months after you had written the letter you have spoken of to Judge Swayne?—A. I feel very certain that the letter was written in the month of August, and I think the 5th of August.

Q. And then it was by the direct action and request of your associate and yourself that this case stood for trial on the docket of the

term of that court beginning November 5, 1901?—A. That motion—I take that to be true.

Q. When did Judge Paquet or yourself go to Pensacola to attend that term of court I have referred to?—A. Judge Paquet went there. He was there a day or two before the opening of the court. I was sick and did not reach there until the 8th of the month.

Q. And Judge Paquet had remained there until your arrival?—A. Yes, sir.

Q. And was personally present on the ground looking after the interests of his clients in that case?—A. I understood so, sir.

Q. When you reached Pensacola on the 8th did you have a consultation with your associate, Mr. Paquet, about the case?—A. Certainly.

Q. Talked over the situation of it upon the docket?—A. No; we had no consultation as to its status on the docket at all.

Q. As to the prospect of its trial?—A. We supposed that it would be tried.

Q. Were you informed by your associate after your arrival in Pensacola as to the fact that Judge Swayne on the opening morning of his court had taken up the matter of the request to recuse himself from the trial, and had made a statement to the effect that he had and held no interest in the real estate that you had referred to? Was that brought to your attention?—A. At the opening of the court?

Q. No; but was it brought to your attention that Judge Swayne had made such a statement on the opening day of the court?—A. Well, I am trying to recollect whether I heard the statement or not, or whether it was on the 5th or later.

Q. Well, were you advised by your associate or others that a statement of that kind had been made from the bench by Judge Swayne?—A. Judge Paquet told me that he had seen Judge Swayne and requested a reply to the letter written in August. Whether he had told me that he had already replied to the letter before I reached Pensacola I do not remember.

Q. After you reached Pensacola were you in court when any reference was made to that matter from the bench by Judge Swayne?—A. Well, I am not certain about that.

Q. Well, as a matter of fact, Mr. Belden, you did know, did you not, that the matter had been up in the court and that Judge Swayne had made a statement from the bench and had declined to recuse himself?—A. Well, I have just stated that my mind is not clear on that—whether I heard it myself or whether Judge Paquet told me.

Q. But in one way or another you were advised that Judge Swayne had made a statement from the bench and had declined to recuse himself?—A. Oh, I was fully informed about that. Judge Swayne made two statements from the bench after I reached there.

Q. The 8th was Friday of the week, was it?—A. Yes, sir. That is the day I reached Pensacola.

Q. And you were in court that day?—A. Yes, I was, I think; about the middle of the day.

Q. Were you in the court next day?—A. I was in court the following day also, but I could not speak. I was paralyzed, and was a mere looker-on.

Q. Was that attack of paralysis of yours general paralysis or what is known as facial paralysis?—A. Facial paralysis and paralysis of the nerve of the right eye.

Q. Were yourself and associate on those two days keeping watch on the criminal docket and the trials in that court for the purpose of ascertaining when your case would probably come on?—A. I suppose Judge Paquet was; I paid no attention to it.

Q. And on Saturday afternoon the criminal docket was concluded?—A. Yes, sir.

Q. Then the judge took up the call of the civil docket, did he?—A. Yes, sir; immediately.

Q. And your case, having been noted for trial and placed on that docket by the action of your side, was called on the docket?—A. Yes. Our understanding was that when the civil docket was reached a special day would have been assigned for our case to which our witnesses could have been subpoenaed.

Q. Did you have any such understanding as that with the court?—A. None whatever.

Q. Then you took your chances that that would be done?—A. I did not think we were taking any chances.

Q. When your case was called for trial on Saturday evening an application was made, as I have understood from you, by Judge Paquet to postpone it until the following Thursday?—A. That is correct.

Q. Up to that time you had intended to go on with the trial of that case, had you?—A. As soon as a day was fixed we expected to have a day given us to which we could summon our witnesses.

Q. Then you at that time were ready, if you could secure the postponement, to go on to trial before Judge Swayne?—A. Certainly.

Q. And the only reason that you did not go to trial and dismissed your case was because you did not have time to get your witnesses; is that so?—A. Yes; that is so.

Q. That was your reason. Had yourself and associates sent any telegrams to Judge Pardee about that time or prior concerning the situation and your desire for another judge?—A. I think Judge Paquet sent a telegram to Judge Pardee to Atlanta, Ga. I read it.

Q. State it as nearly as you can.—A. Well, I can not give the date.

Q. Well, the substance.—A. It was during the time that we were there at the term of the court.

Q. Give the substance of it as nearly as you can.—A. Well, I can give about my recollection of the reply. It was to go ahead and make up our record, and if we were not fairly dealt with take it up by writ of error to the United States circuit court of appeals.

Q. Was that telegram sent before or after your case was called for trial on Saturday evening?—A. That was before.

Q. That was sent, then, before you knew whether you would get your delay for trial?—A. Well, that telegram was sent for other reasons than the question of delay to get our witnesses before the court. Our belief was that we could not get a fair trial before Judge Swayne owing to these transactions in reference to the Rivas tracts of land between Judge Swayne and Mr. Edgar, of New York.

Q. But you had decided to go on with the case before Judge Swayne?—A. We were prepared to go to trial after the telegram from Judge Pardee, of course, with the privilege of getting our witnesses there. We had no alternative left except to try it before Judge Swayne.

Q. You filed your notice placing this case on the trial docket on October 28. Judge Paquet was there before court commenced on the

5th, you arrived there on the 8th, and yet up to the afternoon of the 9th you had not taken any steps to subpoena witnesses. Is that true?—

A. That is true. We had no day assigned to which the witnesses could be subpoenaed.

Q. Then your dismissal of that case was because you did not have time to get witnesses?—A. Unquestionably. If we had had the witnesses there, we would have proceeded and would have tried it before Judge Swayne.

Q. On Saturday afternoon, when you asked for a postponement until the following Thursday, did not Judge Swayne state, in substance, from the bench that the court had no objection if the attorneys on both sides agreed to it?—A. I do not recollect very distinctly. I recollect, however, that Mr. Blount, the opposing counsel, insisted very strenuously on proceeding at once.

Q. Was not that after Judge Swayne had stated, in substance, from the bench that he was willing to grant the postponement if Mr. Blount did not object?—A. I do not recollect that. I recollect Judge Swayne said that he wanted to dispose of the case because he intended leaving Pensacola as soon as he was through with it.

Q. Mr. Blount, the attorney on the other side, did object to that postponement?—A. Yes; he objected to postponing it to Monday.

Q. Against his objection, Judge Swayne did let it go over until Monday morning?—A. He let it go over until Monday morning at 10 o'clock.

Q. And did he not do so upon a statement from the bench to the effect that on Monday morning the case would go on to trial unless you made a showing warranting a continuance or postponement?—A. Well, perhaps he made that statement.

Q. So that the case was open for you, if you had any good ground for a postponement, to have made a showing on Monday morning?—

A. If we had not already made a showing, we could have made the same showing on Monday at 10 o'clock.

Q. Well, you had made no showing of record, had you?—A. None. I do not think there was any showing of record there.

Q. You had filed no motion for discontinuance or postponement?—A. I think not.

Q. Supported it by no affidavits?—A. No affidavits were made that I recollect.

Q. Well, do you not know that the rules of the court require a written motion, supported by a written showing, to justify a continuance or postponement of a trial?—A. I am aware of that; yes, sir.

Q. Then, after you found the case was going on on Monday morning unless you could make a showing for continuance, you decided to dismiss it?—A. Yes, sir.

Q. And because of the fact that you did not have time to get your witnesses?—A. That is the reason.

Q. Where did your witnesses reside?—A. Well, a majority of them resided in the city of Pensacola.

Q. How many were there?—A. Some of them resided in the surrounding country some distance from there.

Q. How many of them were there altogether?—A. I do not know the exact number, but it was over forty.

Q. You testified before the House committee that there were between forty and fifty in your judgment?—A. I think that is correct.

Q. You afterwards tried that same case, after it was rebrought, in that same court?—A. Yes, sir.

Q. And there you had every opportunity to secure your witnesses, did you not?—A. We had all facilities on that trial.

Q. You got all the witnesses you wanted?—A. I think we did.

Q. I will ask you to examine this paper [handing paper to witness] and see if it is the præcipe for witnesses filed by you as the witnesses you desired subpoenaed for that trial of the case when it did come on.—A. I suppose this is the list. I did not make it out; neither did I sign it.

Q. Signed by your associate, Mr. Davis, for himself and yourself?—A. I think so.

MR. THURSTON. Mr. President, it is not necessary to introduce this original paper in evidence, as it already constitutes a part of the record that the other side has put in. Possibly I may be mistaken; the whole record may not have gone in. I ask to have read the names of these witnesses and their residences as showing that all their witnesses, very few in number, resided immediately in and about the court-house at Pensacola.

THE PRESIDING OFFICER. The Presiding Officer has some trouble about having these documents read by the Secretary. Counsel undoubtedly have a right to ask the witness on cross-examination, the witness having testified that there were forty or fifty witnesses, how many witnesses were used when the case came to trial. But the Presiding Officer can not see how it is proper at this time to have this part of the record read. The cross-examination can proceed without the introduction of the paper.

MR. THURSTON. Mr. President, we submit to the ruling. We will offer the paper in our own time, when that comes. [To the witness.] Did you file any other præcipe or ask for subpoenas for any other witnesses on that trial of the Florida McGuire case?

A. I could not inform you. I do not recollect.

Q. Did you file præcipes or ask for the subpoena of any other witnesses than those named in this præcipe, twelve in number?—A. I am unable to tell you.

Q. Did you file præcipes or ask for the subpoena of any witness on that trial who did not reside immediately in the city of Pensacola?—A. I am not able to inform you. I did not attend to the summoning of the witnesses at all.

Q. Will you give me the name of any one witness who lived out of Pensacola whom you wanted on that trial?—A. I could not.

Q. What was the difficulty about your having subpoenas go out on Saturday night and summoning the witnesses in the town to be there on Monday morning?—A. I thought it rather impossible, it was so late in the evening; in fact, night.

Q. You had time to get out a summons in a lawsuit and to serve the judge that night, did you not?—A. Oh, plenty of time; yes, sir.

Q. You had plenty of time for that; but not enough time to summon witnesses living in the town?—A. Not forty or fifty witnesses.

Q. How about the twelve?—A. The twelve? There were a great many more than that.

Q. Who were they?—A. I could not name them. There were a great many in the court-house, and a good many we did not use.

Q. This is the list you summoned. Did you not use all of these witnesses?—A. I could not state. I understand that the Senate has the record in the Florida McGuire case, and it will show.

Q. Can you tell me any one witness whom you wanted who is not included in this list?—A. I could not.

Q. Did not Mr. Marsh, clerk of the court, on that Saturday afternoon state in your presence and to your associates that he would keep his office open and that the marshal would be ready as long as you desired that evening for the purpose of getting out subpoenas and having your witnesses subpoenaed?

A. I am very positive he made me no such offer. No such offer was ever made in my hearing.

Q. Did you make any attempt to summon any witnesses that night?—A. Not that night.

Q. How soon after you got out of court that Saturday afternoon did you decide to dismiss the case Monday?—A. We went immediately into consultation.

Q. Who went into consultation?—A. Myself and Judge Paquet.

Q. Where?—A. I think it was at the Park Hotel, where I stopped, in Pensacola.

Q. And your consultation ended in what decision?—A. We decided to discontinue the suit.

Q. For the reason that you could not get your witnesses?—A. Could not get our evidence there.

Q. What else did you decide to do at that consultation?—At that consultation I think we concluded to bring the suit that we did against Judge Swayne.

Q. What for?—A. To eject him from block 91, I think it is, in Pensacola.

Q. Had you examined the records to see how the title to that property, plot 91, stood of record?—A. I did not.

Q. Did you have it done?—A. I did not, because I knew the title from my examination from the original grant through De Rivas even to the present time.

Q. In whom did that plat show the title?

The WITNESS. Which?

Q. In whom did the plat show the title at that time?

The WITNESS. Which plat do you speak of?

Q. You were telling about the original plat. I mean the one that you spoke of.

The WITNESS. I said the original grant from Spain.

Q. Oh, the original grant. Have you made any examination of the official records of that county to show how the title of block 91 stood of that date?—A. I did not.

Q. Did you have it done?—A. I did not have it done. I suppose, perhaps, Judge Paquet did. I did not have it done.

Q. Did Judge Paquet tell you that he had?—A. He did not.

Q. Did anyone tell you?—A. No person.

Q. Did anyone tell you before you brought that suit as to the showing of the record on the question of the title to block 91?—A. No person that I recollect.

Q. Then you, as an attorney of that court, combining with your associates, began this suit against Judge Swayne without ever having examined the record to know how the title of block 91 stood of record?—

A. Certainly we brought the suit, but knowing that Mr. Charles Edgar, who was a defendant in the suit, claimed title.

Q. You knew Mr. Edgar claimed title?—Yes, sir.

Q. You also knew that Judge Swayne from the bench had disclaimed title, did you not?—A. Not at the time. Speaking for myself, I never heard him disclaim that until, I think, the 11th of the month—

Q. Have you not said—

Mr. Manager CLAYTON. I insist that the witness give the whole answer.

Mr. THURSTON. I beg pardon. I may break in before the answer is all given, but I will try not to.

The PRESIDING OFFICER. The Secretary will repeat the answer.

A. Not at the time.

The PRESIDING OFFICER. The witness said something about the 11th.

Mr. Manager CLAYTON. The witness said that he did hear it on the 11th, and the Secretary failed to hear all of the answer.

The WITNESS. I will repeat the answer. I was not aware at the time of the statement of Judge Swayne—

Q. (By Mr. THURSTON.) Have you not testified this morning—

Mr. Manager OLMSTED. The witness has not yet finished the answer.

Mr. THURSTON. All right.

A. In reference to this purchase until the 11th of the month, when he referred to it at some length from the bench.

Q. (By Mr. THURSTON.) Have you not already testified this morning, in answer to my questions, that after you reached Pensacola on the 8th you were advised by Judge Paquet, your associate, that Judge Swayne had made such a statement from the bench, in refusing to recuse himself?—A. In answer to the previous question, I have stated what I heard myself, and I understood the question by you to be as to whether I had heard the statement from the bench by Judge Swayne.

Mr. THURSTON. No.

A. But I now state that Judge Paquet said that Judge Swayne had decided to retain jurisdiction there, to try the case, but he said nothing to me about the declaration as to the purchase.

Mr. MALLORY. I should like to have the question and answer repeated by the reporter.

The reporter read as follows:

Q. (By Mr. THURSTON.) Have you not already testified this morning, in answer to my questions, that after you reached Pensacola on the 8th you were advised by Judge Paquet, your associate, that Judge Swayne had made such a statement from the bench, in refusing to recuse himself?—A. In answer to the previous question I have stated what I heard myself, and I understood the question by you to be as to whether I had heard the statement from the bench by Judge Swayne.

Mr. THURSTON. No.

A. But I now state that Judge Paquet said that Judge Swayne had decided to retain jurisdiction there, to try the case, but he said nothing to me about the declaration as to the purchase.

Q. (By Mr. THURSTON.) Did you make any inquiry from Judge Paquet or anybody else as to whether or not Judge Swayne had any title or right or interest in block 91 before you brought that suit?—A. Judge Paquet told me that he had ascertained positively that this transaction had taken place.

Q. What transaction?—A. Between Mr. Edgar and Judge Swayne.

Q. What did he tell you it was?—A. A sale of the lot.

Q. From whom?—A. From Charles Edgar, of New York.

Q. To whom?—A. To the Judge, or his son.

Q. That is what Judge Paquet told you?—A. Yes, sir.

Q. Did he tell you that the Judge had made any statement about it?—

A. He told me nothing.

Q. Do you mean to be understood as saying that your associate, in consulting with you about bringing a suit against the Judge, kept you in ignorance as to what the real facts were concerning the title and as to Judge Swayne's statement about it from the bench?—A. I can not say that he kept me in ignorance of anything. I can simply say that when I reached Pensacola, on the 8th of the month, he said nothing to me about Judge Swayne stating anything in reference to the purchase.

Q. For yourself personally, I understand you to state as a fact that you made no inquiry whatever through any source as to whether or not Judge Swayne had title or claimed right or interest in that block?—

A. I did not. I was not able.

Q. You signed the præcipe in the suit against him?—A. I signed it, but I never have read it to this day.

Q. How long after you got out of court Saturday night was it before you had that paper ready to file—agreed upon the suit?—A. I was not present when it was prepared.

Q. Where was it prepared?—A. I could not tell you.

Q. I understand you on your direct examination to state that it was hurried up and served that night so as to get it in time for the rule day of the following month?—A. Yes, sir.

Q. That was the only reason for the hurry?—A. I stated another reason.

Q. What was that?—A. We wanted to have service upon Charles Swayne before he left the State.

Q. He had adjourned court until Monday morning?—A. Yes, sir.

Q. You expected him to be there?—A. Well, of course; certainly.

Q. Then why was that any reason for serving it late on Saturday night?—A. We intended to discontinue our suit, and he evidently would have left right away.

Q. He could not have got out of town without being served, could he?—A. Well, he might.

Q. That was the evening of the 9th of November?—A. Yes, sir.

Q. There were twenty-one more days in November. Is that right?—A. Yes, sir.

Q. Then, whatever the first Monday in November might have been, there were at least twenty-one or two or three days between that night and the next rule day?—A. My understanding of the practice of the courts of Florida is that it requires that papers shall be served at least fifteen days before the next return day.

Q. On that statement, you had at least six days in which to serve it?—A. Certainly, if the judge had remained in town.

Q. As a matter of fact, Mr. Belden, you know, do you not, and so testified before the House committee, that the rule is ten days instead of fifteen?—A. Perhaps I am mistaken in that.

Q. Do you say that Judge Swayne had announced in your hearing that he expected to leave Pensacola as soon as he concluded that term of the court?—A. Yes, sir; on Saturday evening, the 9th.

Q. Do you not know that as a matter of fact Judge Swayne remained in Pensacola from the 1st of November till the early summer of 1902,

and that he was not out of the State at any time during that period?—
A. I am not aware of that fact.

Q. Do you not know that he was living there in a house furnished with his own furniture—keeping house at that time?—A. I am not aware of that.

Q. Were you present when Mr. Davis was employed as an attorney in your case?—A. Yes, sir.

Q. Where was it?—A. I think it was at the Park Hotel. It might have been in some other place.

Q. How long after court adjourned that evening, the 9th of November?—A. After we had concluded to discontinue the case, Judge Paquet having to leave for New Orleans, we requested Mr. Davis to go into the case with us.

Q. Had Davis been with you in the court room that afternoon?—A. I do not recollect whether he had or not.

Q. Had he not been sitting with you in court while the question of postponing the case was discussed?—A. He might have been there. I do not call it to mind.

Q. Had he not been consulting with you about it, making suggestions to you in open court?—A. I have no recollection of anything of the kind. I do not think so.

Q. When you employed Mr. Davis, you employed him both in the Florida McGuire case and the case you expected to bring against Judge Swayne?—A. No, sir.

Q. In which one?—A. He was never employed in the Florida McGuire case which was discontinued.

Q. He made the motion to discontinue it.—A. As a favor, as I have already stated, to Judge Paquet and myself. I could not. I could not address the court, and Judge Paquet was absent.

Q. Did he not enter his name of record as attorney in the case?—A. Not that I am aware of.

Q. Were you in court Monday morning when the case was dismissed?—A. Yes, sir; I was there.

Q. Was a written motion to dismiss filed?—A. Yes; a written motion.

Q. Was it not signed by yourself and Mr. Davis as attorneys for the plaintiff?—A. Mr. Davis signed it; yes, sir.

Q. And you knew it?—A. That he signed it? He signed it in my room; but it was as an accommodation to us simply. He was never employed.

Q. Mr. Davis was your accommodation lawyer?—A. Yes, sir; our accommodation lawyer, if you so term it.

Q. He was counsel, however, with you in the Florida McGuire case after it was re-commenced?—A. After we brought the suit again in the Florida McGuire case he was counsel. Judge Paquet having left the case—no longer the attorney—I suggested to my clients that it would be better to have a local attorney there, and Mr. Davis was employed.

Q. Where did Judge Paquet and Davis go after they left the hotel that evening?—A. I could not tell that.

Q. Do you know if they went to Pryor's store to get up the papers?—A. I do not.

Q. You know who George W. Pryor is?—A. Certainly.

Q. One of your clients?—A. One of our clients in that case. I do

not know where they prepared it. I heard them say it was prepared in the office of Mr. Jerry Sullivan, in Pensacola.

Q. Had you had any consultation with Mr. Davis before the bringing of that suit against Judge Swayne as to where the title in block 91 was?—A. I do not think I had.

Q. Was block 91 in the occupation of anybody?—A. I could not tell that.

Q. Did you not state on your examination before the committee of the House that so far as you knew it was vacant?—A. Well, I did. I heard that it was a vacant lot, and it is based on what I heard, not on what I know.

Q. Judge Swayne was not in possession of it?—A. I think he was constructively or we would not have brought the suit. Mr. Edgar claimed to have possession, and he being the successor to Mr. Edgar we thought he had possession.

Q. Then you thought Judge Swayne was the constructive owner and constructive possessor of the block?—A. Not the constructive owner. We believed from the evidence we had that he was the real owner.

Q. Did you ever follow up the bringing of that suit by filing a plea?—A. No, sir. We simply filed it, and the case was dropped, for the evident reason that had we proceeded we would have gone to jail again.

Q. In that case against Judge Swayne in the circuit court of Escambia County, did he afterwards come in with a sworn plea?—A. I do not know. I know nothing of it.

Q. Did he not in that case enter a sworn plea that he never was in possession of the block, never had or claimed any title, right, or interest in it?

Mr. Manager DE ARMOND. We think probably the plea itself would be the better evidence. Counsel is asking the witness about a particular plea.

Mr. THURSTON. I am asking the witness if the respondent in this case did not file a plea. If the witness does not know—

Mr. Manager DE ARMOND. And we are making the point upon that. Some things that Judge Swayne did swear to which we offered to introduce were excluded upon his objection, and we do not care to have his sworn statements proved in this way.

The PRESIDING OFFICER. The Presiding Officer understands the witness to say he does not know.

Mr. THURSTON. Then I can not pursue it any further. [To the witness.] When was notice served upon you—when was the citation served upon you, giving you notice of contempt proceedings against Mr. Paquet, Mr. Davis, and yourself?—A. I do not recollect any citation, but the charges and the rule were served on me late in the evening of the 11th of the month.

Q. I do not know myself what to call it, whether a citation or not, but a copy of the accusation against you and the rule to show cause were served on that Monday or Tuesday evening?—A. Monday.

Q. Monday evening, the 11th?—A. Yes; that is right, Monday evening, the 11th.

Q. You appeared in court the next morning?—A. The next morning at 10 o'clock.

Q. With Mr. Davis?—A. With Mr. Davis.

Q. Did you have an attorney?—A. We had not.

Q. Who acted on the other side as attorney?—A. The side of the prosecution you refer to?

Q. I say the other side from yours.—A. The other side from ours, Mr. W. A. Blount and William Fisher.

Q. Did either of them make a statement to the court?—A. I do not recollect whether they did or not. I think the case was argued—a short argument after the evidence was taken.

Q. Was the information, if I may call it so, filed against you by Mr. Blount read?—A. I do not recollect; likely it was.

Q. You knew, of course, what it was?—A. Oh, I had read it, of course.

Q. You filed an answer to it?—A. Yes, sir.

Q. Not under oath?—A. No; it was not under an oath. I do not think that the rule for contempt was sworn to, either.

Q. Did Mr. Blount call any witnesses?—A. Yes, sir.

Q. They were sworn and examined?—A. Sworn and examined.

Q. Did either you or Mr. Davis cross-examine them?—A. I know I did not. I could not. Perhaps Mr. Davis did.

Q. Did either of you interpose any objection to any of the testimony that was taken?—A. I do not think we did.

Q. When Mr. Blount closed his testimony, did either you or Mr. Davis call any witnesses?—A. I do not think we did.

Q. Did you offer to do so?—A. I do not think we even offered to do so.

Q. Or ask to do so?—A. I do not think we were asked to do so, either.

Q. But did you ask the privilege of doing so?—A. No, sir.

Q. Did you offer yourself as a witness in your own behalf?—A. I did not.

Q. Did Mr. Davis?—A. He did not.

Q. Then, Mr. Belden, these facts of what you did outside of that court and as to your motives and the honesty of your purpose in doing them were never brought to the attention of Judge Swayne on the hearing of the proceeding for contempt, were they?—A. Never. Under no circumstances would I have gone to him.

Q. And having the privilege of calling witnesses, of testifying in your own behalf, you preferred to let that case rest before him upon the showing made by the other side, and declined to interpose any testimony against it? I am asking you for the fact.—A. I am going to state it. We brought that suit against Judge Swayne—that is, Charles Swayne—the same as we had brought it against the humblest citizen, believing that Judge Swayne was amply as able to defend the case as any other litigant; and it could not, under any circumstances, operate as an injury to him. We felt that the law justified us. We felt that our professional duty to our clients required the suit. We felt that it was to the interest of Judge Swayne himself to clear up the question as to the purchase of the land then in litigation before him. There was nothing done by the attorneys intended in any manner to injure Judge Swayne. In defending ourselves under the rules for contempt it was one of those cases in which the rule itself, coupled with the knowledge that Judge Swayne had of the facts, showed evidently that he himself must have been aware that there was no ground for contempt, and that the record then being tried, with the return or answer we had made to the rule, justified our discharge instantly.

Q. Well, Mr. Belden, you have volunteered all that statement, entirely irresponsive to my question, and I have not objected to it. I should like to have my question repeated now and have it answered. I am asking for facts, and you may volunteer all the reasons you wish. I have no desire to hinder you.

The PRESIDING OFFICER. The reporter will read the last question. The reporter read as follows:

Q. And having the privilege of calling witnesses, of testifying in your own behalf, you preferred to let that case rest before him upon the showing made by the other side, and declined to interpose any testimony against it? I am asking you for the fact.

Q. (By Mr. THURSTON.) Is that a true statement?—A. Now, let me hear my answer.

The reporter read as follows:

A. I am going to state it. We brought that suit against Judge Swayne—that is, Charles Swayne—the same as we had brought it against the humblest citizen, believing that Judge Swayne was amply as able to defend the case as any other litigant; and it could not, under any circumstances, operate as an injury to him. We felt that the law justified us. We thought that our professional duty to our clients required the suit. We felt that it was to the interest of Judge Swayne himself to clear up the question as to the purchase of the land then in litigation before him. There was nothing done by the attorneys intended in any manner to injure Judge Swayne. In defending ourselves under the rules for contempt, it was one of those cases in which the rule itself, coupled with the knowledge that Judge Swayne had of the facts, showed evidently that he himself must have been aware that there was no ground for contempt, and that the record then being tried, with the return or answer we had made to the rule, justified our discharge instantly.

Q. (By Mr. THURSTON.) I will, in substance, repeat my question, and I should like to have the witness make an answer to my question, now that he has made his voluntary statement. [To the witness.] Then it is true, is it not, Mr. Belden, that having an opportunity when called before judge Swayne to produce witnesses, to show all the outside facts that you have testified to here, to testify yourself, to show that you had no malice or animosity, and did not intend to violate your duty as an attorney—it is still true, is it not, that both Mr. Davis and yourself sat dumb and mute and made no answer except an unsworn one in writing?

Mr. Manager DE ARMOND. I believe I will interpose an objection to that question as being an argument. The gentleman understands how to ask questions, and later on it will be time to make an argument.

Mr. THURSTON. I just heard one from the witness, and I did not know but that I could follow it.

Mr. Manager DE ARMOND. The answer to the question was no more argumentative than the question to which it was an answer. I think myself this is a cross-examination.

Mr. THURSTON. I think it is a cross-examination, Mr. President.

The PRESIDING OFFICER. Does the manager insist upon his objection?

Mr. Manager DE ARMOND. No, sir; I do not care to insist upon it, but it seems to me a very bad way to put arguments as questions.

The PRESIDING OFFICER. The Presiding Officer thinks the question might have been made shorter and more direct. The witness will answer.

Mr. THURSTON. I will withdraw that question. I will ask it shorter and more direct. [To the witness.] Then it is true, is it not, that having just the same chance you had here, you did not take the wit-

ness stand in your own behalf; you did not call any witnesses?—
A. We did not deem it necessary.

Q. (By Mr. THURSTON.) And Judge Swayne, in deciding your case, did not have before him any of these outside facts relating to your outside actions and motives to which you have testified here, did he?—

A. I do not know whether he had or not.

Q. Neither you nor Davis presented them to him, did you?—A. I did not.

Q. Did Davis?—A. I do not know whether he did or not.

Q. I mean in court, when you were there?—A. In court, no, sir; there was no discussion whatever of the facts.

Q. Where was Judge Paquet, your associate, during those contempt proceedings?—A. Well, he was in New Orleans; so I understood.

Q. During that contempt hearing was reference made in any way to the identification of the original newspaper article that was published on Sunday morning following the bringing of your suit against the Judge?—A. I read the article complained of by Judge Swayne on Sunday morning.

Q. Was the original manuscript of that article presented there in court on the trial of the contempt proceeding?—A. I do not know whether it was the original or not. They had a paper there that purported to be the report that appeared in the newspaper.

Q. And was or was not testimony introduced there to show that that was the paper sent from Pryor's store to the newspaper office for publication?—A. There was evidence, and that was most of the evidence introduced in the case.

Q. Were you shown that paper in court at that time by Mr. W. A. Blount?—A. Yes, sir.

Q. Did he ask you as to whether or not it was in your handwriting? Look at it now. [Handing paper.]—A. (Examining paper.) Yes, sir.

Q. What did you tell him?—A. I told him it was not.

Q. Did he ask you if it was in Judge Paquet's handwriting?—A. I do not recollect whether he did or not. Perhaps he did.

Q. And did you not answer him that you thought it was in Judge Paquet's handwriting?—A. Perhaps I did.

Q. Look at it now, Mr. Belden.

The WITNESS (examining). This is not my handwriting, and it does not resemble it in any way.

Q. Is that Judge Paquet's handwriting?—A. I can not say that it is.

Q. What is your best judgment?—A. My best judgment is that it is not.

Q. This contempt proceeding was brought jointly against you, Davis, and Paquet, was it not?—A. Yes, sir.

Q. At the time you have spoken of it was only tried as to Davis and yourself?—A. Yes, sir.

Q. Further proceedings were thereafter had in that case against your associate, Mr. Paquet, were they not?—A. Other proceedings were had later on.

Q. And those resulted in his making and filing a written apology, did they not?

Mr. Manager DE ARMOND. Mr. President, we are about to object to that. There is a better way of proving that, if it is true, and then it has nothing to do with the case, anyhow. There is no proceeding

against Judge Swayne here regarding what he did or did not do with respect to Judge Paquet, and even if it is important to ask what he did or did not, or why he did or did not do it, there is a better way of showing it.

Mr. THURSTON. I offered it as a part of the *res gestæ*.

The PRESIDING OFFICER. The Presiding Officer does not see how that is a part of the cross-examination of this witness upon anything he said.

Mr. THURSTON. That, perhaps, is true.

The PRESIDING OFFICER. It may become admissible when counsel for the respondent take up the case. The Presiding Officer does not see how it is cross-examination.

Q. (By Mr. THURSTON.) Did you not testify before the committee of the House, during the time you testified there, and which has been referred to, in answer to the following question:

Don't you know at the time of the bringing of the suit neither Judge Swayne nor his wife claimed any interest?

Did you not answer?

Well, we had an understanding from the reports of the agent and Mr. Edgar that the Judge had purchased the land, and when we learned that suit was pending in the county judge's court against Edgar that revealed the fact that the sale had been made to Mrs. Lydia C. Swayne.

Did you swear to that?—A. Yes, sir; that is correct.

Q. Did you know those facts before you brought that suit?—A. I did not.

Q. I mean, did you know at the time you brought the suit what you have sworn to here that you knew?—A. At the time I brought the suit we knew nothing about the suit to recover the commission.

Q. You had not heard of that at that time?—A. At the time we brought the suit we had not heard of that.

Q. Had you heard any reports from the agent for the land that Judge Swayne had bought?—A. Not myself personally. Judge Paquet told me he had had a conference with them.

Q. What did he say they said?—A. That they had sold it.

Q. To whom?—A. Judge Swayne.

Q. Who did he say told him that?—A. I do not recollect.

Q. Was it Mr. Hooten who testified here the other day—the agent who had the transaction?—A. Well, I do not recollect.

Q. Did you prepare and sign and file a paper in the circuit court of the United States for the northern district of Florida on or about March 17, 1902, in the case rebrought of Florida McGuire in ejectment for the tract of land involved in the old suit? Did you file any paper?—A. I could not tell. Let me see; I will tell you.

Q. (Handing paper to witness.) I ask you to examine that. State if yourself and associate attorneys prepared and filed that paper.—A. (Examining.) Yes, sir; we filed that petition.

Mr. THURSTON. In view of the ruling of the Presiding Officer I will ask to have this paper identified, and we will offer it when it comes our turn.

Mr. Manager DE ARMOND. Of course we will then see if there is any objection to it.

[The paper was marked "Respondent's Exhibit No. 2."]

Q. (By Mr. THURSTON.) I believe you have already stated that you made no effort to prosecute the case you brought in the circuit court

of Escambia County against Judge Swayne?—A. None whatever. We were afraid of contempt proceedings again.

Q. Was that the same reason why you did not join him or his wife in the suit when you brought it in favor of Florida McGuire against the other defendants?—A. Well, that was the reason at the time. I left Pensacola, and have not paid attention to it since.

Q. And you mean to be understood, do you, Judge Belden, that you failed to take any steps to prosecute the case you brought against Judge Swayne because you were afraid of further contempt proceedings? Is that true?—A. That is true, sir.

Mr. THURSTON. That is all.

Reexamined by Mr. Manager DE ARMOND:

Q. You have been asked about not introducing any testimony on the contempt proceeding. I will ask you whether the testimony offered upon the other side was directed to anything except the fact of the bringing of the suit against Judge Swayne, the suing out of process and service of it, and the matters in relation to this article published in the newspaper?—A. That was all.

Q. I ask whether there was any denial upon your part or any effort at evasion about the matter whether you had brought suit and had had service upon Judge Swayne?—A. None whatever; on the contrary, we acknowledged the bringing of the suit, and that we had a right so to do.

Q. Then there was nothing to offer in the way of testimony upon that matter?—A. Nothing whatever, I should think, on either side.

Q. Now, then, as to the matter of that newspaper article. I understood you to say that you knew nothing whatever about it, and that you so stated during the hearing of these contempt proceedings?—A. Yes, sir.

Q. And that Mr. Davis made a similar statement concerning himself?—A. I heard it; yes, sir.

Q. In the court during the contempt proceedings?—A. Yes, sir.

Q. I will ask you whether there was anything else offered in testimony by those supporting the complaint against you than these two matters?—A. Nothing whatever.

Q. Then, I will ask you whether there was anything upon which testimony could have borne in the matter brought out against you?

Mr. THURSTON. We object to that, Mr. President.

The PRESIDING OFFICER. In that form the question is hardly admissible.

Mr. Manager DE ARMOND. Very well.

The PRESIDING OFFICER. The witness might be asked if he supposed there was anything which was important which was overlooked.

Mr. Manager DE ARMOND. I will put the question in that way. Was it your understanding or belief that there was any point made in the testimony against you to be met by testimony for you?—A. That was my belief, and I think it to be a fact.

Q. That there was not?—A. None. I would state that, in so far as that publication is concerned—which perhaps I have stated heretofore—I knew nothing of the publication, either directly or indirectly, and I first heard of it when I bought a paper the following morning and read it.

Q. Was there any testimony offered about Judge Swayne's statements or Judge Swayne's connection with this transaction showing knowledge upon your part of anything?—A. None whatever. Mr. Blount came to me and had me read the paper that has been submitted here. I told him it was not my writing; that I knew nothing of it.

Q. That was the Mr. Blount who was prosecuting this proceeding?—A. Yes, sir.

Q. And the paper referred to is that which it is alleged had appeared in the newspaper?—A. That was the manuscript of the newspaper article.

Q. State whether or not there was any testimony whatever offered tending to show that in the bringing of the suit, or in anything else that you or Mr. Davis or Judge Paquet had done, there was any contempt of court or any improper treatment of the Judge, or anything out of the line of the proper duty of an attorney.—A. Not the slightest.

Q. You were asked when you were upon the stand before some question about whether or not in this whole Florida McGuire case, or in this proceeding about this land, there had not been an effort made to get other judges off the bench. I wish you would explain to the court, if you please, what there was in the way of objection to other judges.—A. I have no knowledge of any application for a recusation of any Federal judge until Judge Swayne—

Q. What was there about the objections to State judges on former proceedings concerning this matter?—A. I was asked in reference to some proceedings that Judge Maxwell, of the circuit court, had—

Q. That is the State circuit court?—A. The State circuit court, yes, sir; and also before Judge McClellan.

Q. Now, what were the points of objection to those judges?—A. I do not think in limine there was any objection at all. The objection was that they were disqualified by reason of relationship to the plaintiffs in the case, but this objection was not urged until long after the case was decided, when they first discovered that they were disqualified.

Q. State whether or not these questions are in the Florida McGuire case as it is in court now.—A. I would state that I understand the Senate has the record in the McGuire case, and it is all fully set forth there. It is necessary, however, to state further that proceedings were taken in 1900, I think, in the circuit court at Jacksonville, the circuit judge here recusing himself, and the circuit judge at that time being the son of Judge Maxwell, who rendered the judgment.

Q. Is that the circuit judge of the State court?—A. The State circuit judge—that is, the son succeeded the father.

Q. You stated that the objection was to the relationship of these judges to some of the parties plaintiff?—A. Yes, sir. The revised statutes of the State of Florida, in reference to disqualification, disqualify a judge from presiding in a case if he is related either by consanguinity or affinity; and both of these judges were related to their respective brothers-in-law.

Q. Were the parties plaintiff in those proceedings, Florida McGuire, or those associated with her, or those who were in the other proceedings—the proceedings with which you were connected—defendants?—A. Yes, sir.

Q. Well, I do not understand. Were those who are plaintiffs in the present Florida McGuire suit the plaintiffs in that suit, or were those who are now defendants in the Florida McGuire suit the plaintiffs in

the old State suits?—A. Yes, sir. I understand you now. The plaintiffs in the present Florida McGuire case are plaintiffs in a suit that they never have been parties to in any litigation heretofore. They were not defendants in that suit before Judge McClellan, and have had nothing to do with any of the litigation that has been carried on here.

Q. How about those upon the other side in the Florida McGuire case? Were they plaintiffs in those proceedings in the State courts?—

A. Please state that again.

Q. I ask you about those on the other side of the Florida McGuire case. Were they the plaintiffs in the proceedings in the State court where these judges were disqualified by reason of relationship?—A. Yes, sir; they were plaintiffs.

Q. How did these plaintiffs get such possession as they may have had of this tract—I mean those who are defendants now and were plaintiffs then?—A. They got possession in the proceedings through the judgment rendered by Judge McClellan.

Q. Was that an injunction proceeding?—A. It was an injunction proceeding, and the heirs and those holding under them were ejected by this process of injunction. One of them was sent to jail for contempt—the eldest heir to the tract.

Q. If I understand you, then, such possession as the defendants in the Florida McGuire case may have they acquired by the novel process of injunction?—A. That is correct.

Q. You stated, I believe, that you went to Florida in 1884?—A. Yes, sir.

Q. To look into this case? Just state about that. You went over here to look into this matter in 1884; you went to Florida?—A. I went to Florida in 1884.

Q. About how long were you there?—A. I remained a year.

Q. Looking into this matter?—A. My business was to look after the title to this same property. Of course I was not occupied a whole year in the case. It was the year that Mr. Blaine was a candidate for President, and I canvassed most of the State for him. I did so at his request, as I was personally acquainted with him.

Q. The case of Florida McGuire was instituted again in the court and tried before Judge Swayne?—A. Yes, sir.

Q. Was there an effort made at that time to get the Judge to recuse himself?—A. Yes, sir.

Q. A petition filed for that purpose?—A. A petition was filed for that purpose.

Q. State to the court the reception and disposition of that petition.—

A. The petition was prepared by Mr. Wilkinson, who was temporarily in this case; that is to say, in the Florida McGuire case. Mr. Wilkinson met me in Pensacola, and we drew the petition up. He presented the petition to Judge Swayne, who ordered it to be filed. A very short time after that, perhaps an hour, he called the petition up, declined to recuse himself, and refused to allow us to introduce any evidence to show the purchase of the property. We had petitioned that privilege in our petition.

Q. You had asked to be permitted to make a showing as to the judge's interest and disqualification?—A. Yes, sir. He denied us that right.

Q. He allowed you to file it?—A. He allowed us to file it, but would not allow us to make proof.

Q. He allowed you to file your petition, but did not allow you to sustain your allegations of it by proof or to offer proof for that purpose?—A. That is correct. I think it was a day or two days after, however, that the judge had filed an ex parte statement in his own behalf.

Q. Then, the only evidence taken was that which the judge took after he had disposed of the matter, apparently to sustain the disposition that he had made?—A. Yes.

Q. What was done with you when you were sent off in charge of the marshal, or deputy marshal, after the sentence had been pronounced against you in the contempt proceedings?—A. Well, I was in the custody of Mr. McGourin, United States marshal, who turned me over to a United States deputy marshal, who turned me over to Mr. Smith, the sheriff of the county.

Q. What was done with you?—A. I was locked up in the jail.

Q. What part of the jail—in a cell or not?

Mr. THURSTON. Wait a moment. We interpose the same objection that we made the other day. Nothing that possibly happened in and about that jail or the manner or method of the confinement of the witness could be chargeable to Judge Swayne.

Mr. Manager DE ARMOND. Mr. President, when the matter was up before what we were trying to show was the general condition of the jail and the general way in which the prisoners were handled or cared for there. Now, I am asking simply a narrative. There was a sentence pronounced against this gentleman and Mr. Davis, and I am asking what was done in the carrying out of that sentence. I suppose, if the sentence had not been carried out at all, it would be competent for the respondent to show it, and I think it is certainly competent for us to show whether it was carried out and how it was carried out. I do not mean in the way of going into the details or description about the jail, but what was done with these men.

The PRESIDING OFFICER. Anything more than that they were imprisoned for a certain length of time?

Mr. Manager DE ARMOND. Well, I desire to show where they were put, where they were changed to—without going into the matter of details—and how long they were kept there.

Mr. HIGGINS. It has all been testified to.

Mr. Manager DE ARMOND. No; it has just been objected to.

The PRESIDING OFFICER (to the witness). Answer the question.

The WITNESS. We were taken into the jail and into that portion of it where the general prisoners were. There were a great many of them in the jail, which threw me directly into contact with them. Shortly after that—

Q. State whether you were locked up in a cell or were not.—A. We were locked up; yes, sir.

Q. In a cell?—A. Yes.

Q. About how long did you remain in the cell?—A. Well, not very long. The citizens of the town there called upon the sheriff and requested that he give us better accommodations than we had there. The weather was at the time very cold and I was paralyzed and could not have stood it where I was first put.

Q. How long did you remain there? Did you remain after the expiration of your sentence?—A. Yes, sir. The whole country was covered with ice, and my eye was in a condition that I could not go into the atmosphere. I remained there two days with the sheriff after my time was up.

Q. About what is the value of this property at issue in the Florida McGuire case, roughly stated?—A. Well, it is a very hard and difficult thing to fix the value of property.

Q. I mean a general estimate of it.—A. With the title settled to it, I suppose it is worth over a million.

Mr. Manager DE ARMOND. I believe, Mr. President, that is all.

Reexamined by Mr. THURSTON:

Q. When you filed your petition in the rebrought Florida McGuire case in 1902, Judge Swayne in deciding it filed a written statement in the case, did he not?—A. I do not know; I could not tell you that.

Q. Did you not say that he had made a written statement?—A. No, sir; I do not think so. If I did, I made a mistake.

Q. Did not that case go from that court up to the circuit court of appeals?—A. Yes, sir.

Q. You examined the record?—A. I examined. The record was complete.

Q. You prosecuted the appeal?—A. Yes.

Q. And did not Judge Swayne's written statement go up as a part of the record in that appeal case?—A. It might. I have not noticed it.

Q. That case was affirmed by the circuit court of appeals, was it not?—A. Yes, sir; it was affirmed in a few lines, but without any reference whatever to the question Judge Swayne presented in that petition. It omitted entirely to pass upon that question.

Q. It was affirmed by the three judges of the circuit court of appeals of your circuit?—A. I think so; yes, sir.

Q. And as far as that circuit court of appeals is concerned, they found no error in the record?—A. Perhaps they stated it that way. I do not recollect the exact phraseology of their judgment or decree.

Q. One question I wish to ask you, Mr. Belden, as to your former testimony that I overlooked before. While a witness before the House committee at the time we have referred to, did you not state, in speaking as to the rumors that Judge Swayne had purchased block 91, as follows:

The rumors were so definite and of such form as to leave no doubt in the minds of counsel of the purchase. So the 19th day of October Judge Paquet and myself addressed a letter to Judge Swayne requesting him to recuse himself for the reason I have just stated, being a party at interest; to recuse himself and notify Judge Pardee, so he could assign a disinterested judge at the November term.

Did you not further state:

The November term I was sick—had an attack of facial paralysis—but our clients telegraphed me to come over, though I could not appear before the court. Later on, the 9th or 11th, he replied to our communication, in which he declined to recuse himself, and went on to state he had not purchased the land, that a relative of his had purchased the block of ground in question, and that he had got hold of the deed and returned the deed to the vendor of the deed. The vendor of the deed was C. H. Edgar, a party defendant in the suit in question, and he being a party defendant, made Judge Swayne a party defendant to him, as we supposed. He stated that the deed had been sent on to this relative at Guyencourt, and he returned it, as he had no interest whatever.

Did you not further say:

And we also learned that a suit had been brought by Watson & Co. v. Edgar for commissions due them by Edgar.

And did you not further say:

Now, upon that we brought suit against Judge Charles Swayne. The first thing we did in the morning, before any business was transacted, was to discontinue the suit.

Did you not make that statement before the House committee?

Mr. Manager OLMSTED. Is that a question?

Mr. Manager DE ARMOND. I suggest that if counsel for the respondent wish to examine the witness fairly they ought hardly to read as much as a page from different parts of a book and ask for an answer "yes" or "no." I do not suppose anybody could keep connected in his mind all those several questions, and answer them "yes" or "no."

The PRESIDING OFFICER. If the witness states that he can not answer so long a question it can be divided.

A. The first and second questions I think I can answer. Perhaps the third I will ask to have restated. The statement as to the 19th of October being the date of the letter to Judge Swayne is an error. It was written in August; I think August 5. In regard to the second question about bringing the suit, it is an error in stating that we had before us the judgment, or rather the suit of Watson & Co. v. Charles Edgar. We had the other information I referred to, but not that. Now, as to the third question you asked me about—

Q. (By Mr. THURSTON.) Did you not further state, referring to what you have just stated:

Now, upon that we brought suit against Judge Charles Swayne?

A. Yes, sir; but I desire to state, in connection with that, that the suit against Charles Edgar by Watson & Co. was a suit to recover their commission for the sale of the property, and that that suit was pending before the circuit court of the United States at the fall term, and was evidently known to Judge Swayne.

Q. You informed yourself about that suit, did you?—A. We finally found out about it accidentally.

Q. That suit was one of the foundation facts upon which you thought you were justified in suing Charles Swayne for the title of this property?—A. Well, certainly.

Q. Is it not a fact that that suit was brought against Edgar to recover fees claimed to have been earned, and that Edgar was a nonresident, and the only jurisdiction they got in the case was to attach block 91 as Edgar's property?—A. I know nothing of those facts.

Mr. THURSTON. That is all.

Mr. McLAURIN. Mr. President, I desire to propound a question.

The PRESIDING OFFICER. The Senator from Mississippi propounds a question, which will be read by the Secretary.

The Secretary read as follows:

Q. Was any evidence offered in the contempt proceedings by the prosecutors of the rule upon you for contempt tending to show that you or Mr. Davis had anything to do with the writing of the newspaper article?

A. Not one word.

Mr. BACON. I desire to propound a question to the witness.

The PRESIDING OFFICER. The Senator from Georgia propounds a question, which will be read by the Secretary.

The Secretary read as follows:

Q. Did you, in bringing the suit against Judge Swayne in the State court, design and intend thereby to compel him to recuse himself on the trial of the case then pending in the Federal court?

A. Of course not; no lawyer in the United States who has any sense would have taken that course.

Reexamined by Mr. Manager DE ARMOND:

Q. Was Watson a defendant in the Florida McGuire case?—A. Yes, sir.

Q. Was there a case of Larvalette tried before Judge Swayne some time before these transactions, in which the same matter necessarily would be gone over as to the ownership and the claims of title to this land, including block 91?—A. The same; yes, sir.

Q. The claim of Larvalette was practically the same as that of McGuire?—A. They are brother and sister.

Q. They claimed through the same source of title?—A. Yes, sir; the same source.

Q. And Judge Swayne, before this transaction with relation to the purchase of block 91, had tried that case?—A. He had tried that case.

The PRESIDING OFFICER. Is that all?

Mr. Manager DE ARMOND. Yes, sir.

Mr. NELSON. I desire to propound a question.

The PRESIDING OFFICER. The Senator from Minnesota propounds a question, which will be read.

The Secretary read as follows:

Q. How long before you wrote Judge Swayne to recuse himself was the suit of Florida McGuire commenced in his court?

A. The January previous.

The PRESIDING OFFICER. Are there any further witnesses on behalf of the managers?

Mr. Manager DE ARMOND. Yes, sir; have Mr. Murphy called.

MICHAEL MURPHY sworn and examined.

By Mr. Manager DE ARMOND:

Q. Where do you reside?—A. Pensacola, Fla.

Q. What office did you hold in Pensacola or in Escambia County in November, 1901?—A. Deputy sheriff, sir.

Q. State whether or not you were in charge of the jail when General Belden and Mr. Davis were brought there by the United States marshal or deputy marshal.—A. Yes, sir; I was in charge of the jail.

Q. Was there a commitment brought with them?—A. To the best of my knowledge, yes, sir.

Q. State what you did with them.—A. I—

Mr. THURSTON. One moment. We object to this. We did not insist very hard on our right to this objection while Mr. Belden was testifying, but it is certain that what took place in that jail, its condition, the way the prisoners slept, the way they were fed, the way they were treated, could not be used to prejudice the court against Judge Swayne unless they first laid the foundation for it by showing that he was responsible for it or directed it.

The PRESIDING OFFICER. That was the opinion of the Presiding Officer on a former day, but the questions which were asked Mr. Belden

were allowed on the ground that they were a narrative of what occurred. The Presiding Officer does not think that evidence showing that the condition of the jail was an improper one is admissible unless it be shown that it was known to Judge Swayne and that that was part of his motive in committing them there.

Mr. Manager DE ARMOND. I was not going to ask the witness about the general condition of the jail. I was going to ask questions practically the same as those asked General Belden; about what was done with them.

The PRESIDING OFFICER. What is the purpose of the questions?

Mr. Manager DE ARMOND. To show the punishment they endured.

The PRESIDING OFFICER. Unless there is something unusual in the character of the jail, which was known to Judge Swayne, the Presiding Officer thinks the evidence is inadmissible.

Mr. Manager DE ARMOND. Of course, we could show it was the jail to which Federal prisoners were ordinarily sent. It is only upon that point we wish to examine the witness. If the court excludes it, of course I will not take further time.

The PRESIDING OFFICER. The Presiding Officer thinks it is inadmissible.

Mr. Manager DE ARMOND. I will have Mr. Davis recalled. We have another witness in regard to the same matter, but I will not call him. You are excused, Mr. Murphy.

ELZA T. DAVIS recalled.

Examined by Mr. Manager DE ARMOND:

Q. State to the court whether in the hearing of the contempt proceedings against you in Judge Swayne's court your attention was called by the judge to a paper purporting to be the original manuscript copy of what had been published in a newspaper in Pensacola.—A. Yes, sir; he held the paper up in his hand, and he called me to the bench. He says, "Mr. Davis, will you swear that you did not write this paper?" I replied to him, "I solemnly do," and laid the paper down upon the bench like that [indicating].

Q. That was during the hearing?—A. Yes, sir.

Q. State whether or not there was any testimony in that hearing, offered by Mr. Blount or those looking after the prosecution, upon any point except as to the bringing of the suit in the State court and the service of process and as to that article which is said to have appeared in the newspaper.—A. None that I remember.

Q. Was there any testimony offered to show or tending to show anything about what you and Mr. Belden, or either of you, knew about any declaration made by the Judge respecting his interest or the interest of any member of his family in the property?—A. None at all.

Q. Was there any testimony offered showing or tending to show anything done by you gentlemen with the intention of obstructing process or interfering with the work of the court or bringing reproach upon Judge Swayne?—A. Nothing whatever.

Q. The testimony related to those two points?—A. Yes, sir.

Q. Did it relate to anything else whatever?—A. Nothing whatever.

Q. And the testimony you offered was to show that Mr. Blount and Mr. Fisher were attorneys and parties in the Florida McGuire case?—A. Yes, sir.

Q. Is this the same Mr. Fisher who was appointed receiver when possession was obtained by those who are now the defendants in the injunction proceeding?—A. The same one.

Q. State whether or not Mr. Fisher gave a bond as receiver or whether he operated without it.

Mr. THURSTON. We certainly object to that question. It is entirely irrelevant and immaterial.

The PRESIDING OFFICER. What was the question?

Mr. Manager DE ARMOND. Whether Mr. Fisher gave a bond as receiver in the proceedings in which by injunction those who are now defendants in the Florida McGuire case obtained possession of the property in dispute.

Mr. THURSTON. Counsel is asking now about Fisher, an attorney who was associated with Mr. Blount in presenting before the court the contempt case against Mr. Davis and Mr. Belden. He is offering to show in some way—I do not know how—that Fisher at some other time and in some other place has done something that would reflect upon him. I can not conceive of any other purpose; I do not think that can be done. It has no relevancy to this case. There is no charge of any kind made here against Mr. Fisher. He is not a witness in the case. The propriety of the proceedings in that matter before the court has not been questioned. How can he be attacked collaterally here in his absence? This ought not to be a general attack. It ought to be confined to those who are before the court.

Mr. Manager DE ARMOND. Mr. President, it has been shown that Mr. Fisher and Mr. Blount were parties defendant and attorneys for other parties in the Florida McGuire case. It has also been shown, brought out originally by the cross-examination of the gentleman on the other side when General Belden was upon the stand, that Mr. Fisher was appointed receiver when those who are now defendants in the Florida McGuire case were plaintiffs in the State court and by means of an injunction obtained possession of the property in dispute. All I am asking this witness, and that to which counsel objects, is whether William Fisher gave a bond as receiver in that proceeding. That is the matter submitted to the court.

The PRESIDING OFFICER. The Presiding Officer does not see how it is material.

Mr. Manager DE ARMOND. Very well. I will not pursue it any further. The object was to show the relation and connection of Mr. Fisher and Mr. Blount to these proceedings. [To counsel for respondent.] Cross-examine, gentlemen.

No cross-examination.

The PRESIDING OFFICER. Are there any more witnesses on behalf of the managers?

Mr. Manager DE ARMOND. I suppose it is proper to introduce in evidence the statutes of the State, and I wish to introduce in evidence sections 967 to 970 on the subject of the disqualification of judges, and sections 1511, 1512, and 1513 of the Florida Revised Statutes (1892) upon the subject of ejectment. I will ask the Secretary to read them.

The PRESIDING OFFICER. Does the manager desire to have the sections read?

Mr. Manager DE ARMOND. Yes, sir. It will take but little time.

The Secretary read as follows:

ARTICLE I.

DISQUALIFICATION OF JUDGES.

967. *What are disqualifications.*—No judge of any court shall sit or preside in any cause to which he is a party or in which he is interested, or in which he would be excluded from being a juror by reason of interest, consanguinity or affinity to either of the parties, nor shall he entertain any motion in the cause other than to have the same tried by a qualified tribunal.

968. *What are not disqualifications.*—No judge shall be disqualified from sitting in the trial of any suit in which any county or municipal corporation is a party, by reason that such judge is a resident or taxpayer within such county or municipal corporation.

969. *Retirement of disqualified judge.*—The judge so disqualified shall retire of his own motion and without waiting for an application to that effect.

970. *Effect of the action.*—Any and all judgments, decrees, and orders, except an order for the trial of the cause as hereinbefore provided, made by a judge so disqualified shall be of no force or validity, and shall be null and void.

EJECTMENT.

1511. *Common-law action abolished.*—In actions of ejectment it shall not be necessary to have any fictitious parties to the suit, but the party plaintiff may bring his suit directly against the party in possession or the one claiming adversely.

1512. *Summons.*—The ordinary writ of summons may be issued in all suits in ejectment in this State, and in no case shall it be necessary to serve a copy of the declaration in such suits upon the defendant therein.

1513. *Pleadings*—1. *Declaration.*—The declaration shall only contain a plain statement of the cause of action to entitle the plaintiff to recover the land in controversy, together with mesne profits. It may be in the following form, to wit:

"In the circuit court of Florida, _____ circuit, _____ county, to wit:

"A B, by his attorney, sues C D in an action of ejectment: Because the defendant is in possession of a certain tract or parcel of land situate, lying, and being in said county, known and described as follows, to wit [here describe the land], containing about _____ acres, to which said plaintiff claims title; and the defendant has received the profits of said land since the _____ day of _____, A. D. _____, of the yearly value of _____ dollars, and refuses to deliver possession of said land to the said plaintiff or to pay him the profits thereof."

2. *Plea.*—The plea of "not guilty" shall put in issue the title of said land in controversy. Such plea shall be held to admit the possession of the defendant, or, in case of an adverse claimant, the adverse claim of the defendant. Should the defendant wish to deny possession it shall be done by special plea.

Mr. Manager OLMSTED. Mr. President, that is our case.

The PRESIDING OFFICER. Are counsel for respondent ready to proceed?

Mr. HIGGINS. Yes, sir. Shall I proceed? I suppose I will go on until the hour of adjournment, at 5 o'clock.

The PRESIDING OFFICER. Perhaps the Senate will sit longer than 5. The PRESIDING OFFICER can not determine that.

Mr. HIGGINS. Mr. President, leaving out of the reckoning—

The PRESIDING OFFICER. If the counsel will pause for a moment, how much time will counsel probably occupy in his opening argument?

Mr. HIGGINS. I have some matters reduced to writing, but I can not confine myself to them entirely. I can not tell whether I will take one hour or two or three hours.

The PRESIDING OFFICER. But the counsel thinks at least an hour?

Mr. HIGGINS. Oh, at least an hour.

The PRESIDING OFFICER. Very well.

Mr. HIGGINS. Mr. President, leaving out of the reckoning the trial

of Judge Humphries, which occurred in his absence and under the anomalous conditions of the civil war, it is seventy-five years since a Federal judge was impeached for alleged misconduct in the discharge of his official duty.

During that long period "the sword of the Constitution," as it has well been called, has not been unsheathed.

On behalf of the respondent we rest in confidence that in the present instance it has been unsheathed most improvidently.

I say this in view of the evidence laid before the court by the learned managers, and in view of the further evidence it will be our duty to submit on behalf of the respondent.

As to the contempt cases, we think it already appears that flagrant contempts were committed by Davis and Belden in the one case and by O'Neal in the other.

That Judge Swayne had jurisdiction within the terms and limitations of the act of 1831, section 725, Revised Statutes.

That the sentence he imposed was both moderate and just and without any evidence of malice, but simply in the discharge of his duty, which he could not escape.

The other three charges it is difficult properly to characterize and maintain the moderation of language due to this court.

We deem them not impeachable high crimes and misdemeanors within the meaning of the Constitution of the United States, and on the facts and law without merit.

But whatever may be the proper view to take of the merits of these articles and of the evidence in support of them, there can be no uncertainty as to the importance of this case in other respects.

The respondent, because of the judgment he pronounced in criminal charges against three men, is by a prosecution of their instigation himself brought from the judgment seat of his own court and placed at the dock of yours.

If convicted it drives him from office. It ends his judicial career. It shuts him off from his retiring pension. It disqualifies him from other offices of honor. It destroys his life.

To accomplish this this court has been convened. The vast interests of a mighty nation in the closing hours of the short session of Congress are held up while the diminutive issues of this contention are thrashed out as in a law court.

But behind both respondent and court stand another body of men, whose interest in this impeachment and its outcome raise it to an importance and dignity worthy of the character of this august tribunal.

It is the Federal judiciary—the coordinate branch of the Government, the keystone of the Federal arch; at once the most powerful and the most helpless.

Shall their weapon of defense, on which rests their independence and their freedom of deliberation from force, be stricken down, and that from a quarter where they are individually helpless, except in the justice of their cause and the lofty character of their judges?

Shall they be stricken down by the legislature through the process of impeachment?

Through them you touch the acutest interest of the American people.

You assail the balance of the Constitution. You touch its nerve center and tenderest point.

Here this cause rises to its highest dignity; to its supreme importance, and challenges the anxious attention of intelligent and thoughtful American citizens of whatever walk in life.

I shall first ask the attention of the court to the articles in the reverse order in which they have been presented, and that is to the contempt cases, and, following the course taken by the learned manager who opened the case on the other side, I shall ask the attention of the court in the first instance to the Davis and Belden case. It is to be said of it, as of the O'Neal case, that the question before the court is not whether O'Neal in the one case and Davis and Belden in the other were rightly adjudged guilty of contempt and sentenced to punishment, but it is whether Judge Swayne's conduct in rendering said judgments was both so lacking in jurisdiction and so malicious that he is amenable to impeachment therefor.

DAVIS AND BELDEN.

These four articles—8, 9, 10, and 11—I will endeavor to treat together, as it has already been made apparent by the evidence that they relate to but one transaction, known and described as the Davis-Belden contempt case.

I will treat the question from two standpoints. First, that the adjudication of contempt against these two attorneys was within the terms of section 725 of the Revised Statutes and a just one. That the sentence, although exceeding the law, was not imposed through malice, and hence no impeachable offense has been made out by the House managers. Second, that whether or no the allegations and proofs bring the case within the true intent and meaning of section 725 of the Revised Statutes of the United States it was within the jurisdiction of the respondent, sitting as a judge in this cause, to try and determine that very question, and a wrongful determination thereof was a judicial act for which he is not impeachable, unless he be so held from a corrupt or malicious intent, which intent is wholly lacking in this cause, and can not be presumed from the fact that in imposing sentence he, through ignorance of the statute and its provisions, exceeded the law.

STATEMENT OF FACTS.

Before I ask the Secretary to read the motion and answer in this case I beg to submit certain preliminary observations.

First. There was no difficulty in these lawyers raising and having adjudicated their claim that the judge should decline to sit in the case, or as they seem to term it in the southern circuit of this country, to "recuse" himself, a phrase, I believe, drawn from the civil law.

All they had to do, and what they should have done, was to present to the court a petition or affidavit alleging their facts and praying or moving that he recuse himself.

If he should refuse their prayer or motion, they would then have their case upon the record, and could have their question reviewed upon a writ of error.

Everything then would have been done decently and in order.

More than that, Mr. President, they were not the only parties to the case who were interested in the question as to whether the Judge should recuse himself or not because of his self-interest. That affected the

defendants as acutely as it affected the plaintiffs, and whether the defendants did or did not want him to sit was a question in which they were concerned as much and as well as the plaintiffs, and they were entitled to be heard upon that question. And yet by the course taken by these gentlemen they gave the defendants to that suit no opportunity to be heard upon it, for they began it by the improper—I do not accuse them of any gross impropriety—but the improper way of bringing the subject to the attention of the court.

The great principle, Mr. President, is, as every lawyer knows, that the court does not move; it is moved; and a letter to a judge on the bench is no way to bring a question before him that is not *ex parte*, but which itself concerns both sides. So they ought to have taken this case by presenting their petition as they did when they renewed their suit. It ought to have been done so in the first instance, and in such case the defendants to the suit would have been before the court when the matter was determined, and the judge would have delivered his judgment, and that could be taken up on error, as has been done in the subsequent litigation between the same parties.

All this is made perfectly apparent and incontrovertible by the course they actually took when they renewed the suit at the next term.

Now, next, and I submit to the court most important, it is not open to dispute in this case that Judge Swayne never had any property in, title to, or ownership of block 91. The learned managers have closed their case without offering a scintilla of evidence of any title in him to that land.

Not only that, Mr. President, but up to the testimony of Mr. Belden in this cause here there has been nothing in the record which showed that either Davis or Belden claimed that he had any interest in it.

Now, when I approach that phase of the matter I must at the outset interpose another preliminary observation, which goes without saying in this discussion and this adjudication, and that is that the case the Senate is trying is the one that was before Judge Swayne, the one that was made by these two lawyers there. What was the record that they made before him? They came in with their answer. In their answer they never claimed that the judge had any such title to the property. All they asserted was that Mrs. Swayne owned it, and when ruled to show cause why they should not be punished for contempt, all they alleged in justification was that the judge had said that there was in existence an uncanceled deed to her and nothing to him.

It was left, Mr. President, for the learned manager [Mr. Manager Palmer], whose absence I regret, for I want to say nothing behind his back, and I will not, that I would not say to his face—it was left for him to make the groundless and unjustifiable and, with all respect to this court, I submit, the inexcusable insinuation that the judge had bought the property for himself, but took the title in Mrs. Swayne's name so that it could be concealed, and that in the face of the fact that in the very statement of these defendants in their answer as justifying their suit against him it is stated that he had alleged there was outstanding an uncanceled deed to her, the purchase to be paid for, as the answer says, by Mrs. Swayne out of her private fortune received in inheritance from her father.

I therefore start out, Mr. President, with my feet firm on the foundation of rock in this case that there never was, and is not, any title

to Judge Swayne to that land, and there never was for a moment any title, nor any reason why anybody thought there was any title in him.

It is equally clear, as a matter of law, that there was no title in Mrs. Swayne. What ground do they allege that would make title in her? A deed to her uncanceled.

Why, Mr. President, does not every tyro know—does it even come up to the measure of hornbook law—that it takes delivery to make a deed? It is not its writing; it is not its signing; it is not its sealing; it is not its being witnessed; it is not its being acknowledged. None of those make a deed. A deed is made by delivery, and only by delivery.

Now, where is it claimed or set up in this case by any evidence that Mrs. Swayne had any deed delivered to her, and what was the justification of these lawyers who complained? We think it was not fair that they were charged with being ignorant, but what justification was there for them in saying that there was title in Mrs. Swayne because there was an uncanceled deed to her, without there being any allegation that it ever was delivered to her?

Now, the learned managers have produced their own witnesses. They have made their own case. They had Mr. Hooten here. He conducted the transaction. They stand on his evidence, and we do, too—that it was but a negotiation, only a negotiation, no more than a negotiation. It never was a completed purchase. Money was not paid, no deed was received; and, lo and behold, it all went off, because it is conceded upon both sides that there was a defect in the title. No wise man certainly buys a defective title.

The universal rule, subject to possible exceptions in peculiar particular cases, is that when purchase is negotiated the first thing is to submit the title to the counsel for the purchaser that he might satisfy himself in that regard. Until that is done it is all cautionary. There was no written agreement in this case. All that went on was correspondence between Watson & Co. on the one side and Edgar, in New York, on the other; and, lo and behold, it turned up that Edgar refused to warrant the title by a warranty deed because of the fact that it was involved in this Spanish grant, indifferently called Rivas, Cheveaux, and Caro.

Now, that fact was brought to the attention of Judge Swayne, and I will ask the Secretary to read this correspondence.

The PRESIDING OFFICER. Without objection, the Secretary will read.

The Secretary read as follows:

"We have deed to block 91, New City, from Mr. Edgar, but he refuses to give a warranty deed to this block; he merely gives quitclaim deed. We have received a letter from him, in which he writes he is unwilling to give anything but a bargain and sale deed, as he is afraid of the old ——— Caro claim on this, which seems to be his objection. We have recently made an abstract of title of this property, and it seems to us we would just as soon have one deed as the other, but we lay the matter before you so as to have you perfectly satisfied. In case the deed is not satisfactory to you, of course, we will have to drop this deed or wait until you come home. Thanking you for an immediate reply.

"Yours, truly,

THOMAS C. WATSON & Co."

I received a reply from him, letter dated July 22, 1901:

"GENTLEMEN: You may omit block 91 and send papers for the others along. and oblige,

"Yours, truly,

CHARLES SWAYNE."

Mr. HIGGINS. So, Mr. President, the court will see that never even a deed ever got to Judge Swayne or to Mrs. Swayne. It was halted at Pensacola in the custody of Watson & Co.

Now, other deeds, it seems from the evidence—a mortgage and notes accompanying it—were sent to the Judge and returned by him, and in the lapse of time—for this was the 1st of July or early in July of that year—between that and November, when the case came up, the Judge had gotten a little mixed with regard to it, and in the statement that he placed upon the record and the one he made from the bench he said the deed had been sent to him and returned. Though that was not the fact, but as a part of the record I will ask the Secretary to read the statement put by the Judge upon the record.

The Secretary read as follows:

At the time of the presentation of the said motion by the said W. A. Blount, in open court, on November 11, 1901, the said Simeon Belden and the said E. T. Davis were present in the said court, and before making said order the said judge made and directed to be spread upon the minutes the following declaration concerning his connection with the land in the Cheveaux tract, mentioned in said motion, to wit:

"On Tuesday, November 5, 1901, at the time of the presentation of the said motion by plaintiffs, that the court recuse himself, he had then stated, and now states, that he never agreed to accept, nor ever accepted, any deed to any portion of the said Cheveaux tract; that, as he stated, a member of his family, to wit, his wife, had, with money inherited by her from her father's estate, negotiated for the purchase of some city lots in Pensacola; that certain deeds in connection therewith had been sent to her in Delaware, one of them proving to be a quitclaim deed, and upon investigation and inquiry it was found that the property in this deed was a portion of the property in litigation in the suit of Florida McGuire v. Pensacola City Company et al., and that thereupon, and by his advice, the said deed was returned to the proposed grantors with the statement that no further negotiations whatever could be conducted by them in relation to this property, and they thereupon refused to purchase, either at the present time or in the future, any portion of the said tract."

Mr. HIGGINS. Now, Mr. President, it does appear that no deed was delivered to Mrs. Swayne, and therefore that she never got title. No money was paid by her, and the land never was hers. An uncanceled deed outstanding is less than the baseless fabric of a dream as the foundation of title upon which to predicate a suit against her. There was not even the pretense of a suit against her husband.

Now, further, Edgar never claimed that he had sold the property to Mrs. Swayne. He resisted Watson & Co.'s suit for commissions, and the suit was abandoned, and the land was afterwards, we will show, sold. I think it has already appeared in evidence that they sold it afterwards to other parties, to wit: The Pensacola Development and Investment Company.

The very reason why the Judge refused to let Mrs. Swayne buy block 91 was that it was included in the Caro grant, involved in its disputed titles, and in this very litigation in which he was asked to recuse himself, but weeks before he received the letter from Belden and Paquet. Further, there was nothing in the record of the suit of Florida McGuire v. Pensacola City Company to disclose the fact that block 91 was a part of the land in dispute therein.

The declaration in the suit described the land in the following words, which I will ask the Secretary to read:

The Secretary read as follows:

The said defendants are in possession of a certain tract or parcel of land, situate, lying, and being in the county of Escambia, State of Florida, known and described as follows:

A certain parcel of land known as the "Gabriel Rivas" tract, containing about

two hundred (262½) sixty-two and one-half acres, more or less, in the eastern portion of the city of Pensacola, Escambia County, State of Florida, mostly in section eight south, range twenty-nine west, forming a lot of three hundred (300) superficial arpents, according to a figurative plan of the survey from the mouth of the rivulet, as the extreme east of this population according to the plan thereof, and is bound northerly and westerly by vacant lands. Southerly it confines with the Bay of Pensacola and easterly with the rivulet of the Texar, its most westerly limit being north of the compass with a declination of seven degrees and fifty minutes to the northeast as shown by the original Spanish grant to Gabriel Rivas, the 10th day of November, 1806, and registered in book seven, folio sixteen, number 1793, said property being as aforesaid situate in the county of Escambia, State of Florida, to which said plaintiffs claim title, and the defendants have received the profits of the said lands since the, to wit—

Mr. HIGGINS. I beg pardon of the court for taking its time.

Mr. BACON. Mr. President, with the permission of the counsel, as the hour has arrived at which, under the order, the Senate sitting as a court of impeachment will adjourn, it has been suggested that possibly it might be to the convenience and in accordance with the wish of counsel for the respondent to proceed at this time. If so, I would make a motion to that effect. But before doing so I would ask that the court or the Presiding Officer ascertain whether it is in accordance with the wish of the counsel for the respondent thus to proceed.

The PRESIDING OFFICER. The order is that the Senate sitting as a court shall commence its session at 2 o'clock and continue till 5.

Mr. BACON. "Unless otherwise ordered."

The PRESIDING OFFICER. "Unless otherwise ordered." We are not limited to 5 o'clock if we wish to continue longer.

Mr. BACON. I was suggesting that we might otherwise order at this time, if agreeable to the counsel. That was the suggestion which I made.

The PRESIDING OFFICER. The Presiding Officer wishes to suggest one other thing—that after to-day there are only ten working days remaining of the session.

Mr. HIGGINS. I recognize, Mr. President, the public duties of the members of this court, and I will impose no convenience of mine in the way. I am willing to go on for some time, if it is not fatiguing to the members of the court.

Mr. TELLER. Let the Senator from Georgia ask for unanimous consent to proceed until 6 o'clock.

Mr. BACON. Mr. President, I will suggest to the Chair that he take the order of the Senate, either by unanimous consent or by a vote. It can be done by unanimous consent, I presume.

The PRESIDING OFFICER. If there be no objection, counsel will proceed until an order for an adjournment or some other order in the premises is made.

Mr. TELLER. Inasmuch as we have a standing order, it seems to me that we ought to change it. I ask the unanimous consent of the Senate that the order shall be changed from 5 o'clock to 6 o'clock.

The PRESIDING OFFICER. For each day?

Mr. TELLER. For to-day only.

The PRESIDING OFFICER. The Senator from Colorado asks unanimous consent that the order for the day be changed so that the Senate sitting as a court shall continue in session until six o'clock. Is there objection?

Mr. PETTUS. Mr. President, if I am allowed, the Senate made an order fixing the hour for general business and for this business. I am

very much inclined to think, Mr. President, and I make the suggestion, that we are bound by that order, and we are not to trespass on it.

The PRESIDING OFFICER. The order is that we commence at 2 o'clock with the impeachment trial and continue until 5 o'clock, unless otherwise ordered. The Presiding Officer supposes that it is in the power of the Senate sitting in the impeachment trial to order otherwise.

Mr. CULLOM. Were the words "unless otherwise ordered," expressed by the Presiding Officer of the court, agreed to in the Senate or in the court of impeachment?

The PRESIDING OFFICER. They are in the order.

Mr. CULLOM. The order made by the court of impeachment?

Mr. PETTUS. Made by the Senate.

Mr. CULLOM. If made by the Senate—

The PRESIDING OFFICER. The recollection of the Presiding Officer is that the order was passed while the Senate was sitting in the impeachment trial. The Senator from Georgia [Mr. Bacon] will know.

Mr. FAIRBANKS. I had the honor of presenting that order. It was an order passed by the Senate sitting as a court of impeachment.

The PRESIDING OFFICER. That was the impression of the Presiding Officer. The Senator from Colorado asks unanimous consent that the order be modified to-day so that the Senate sitting in the trial of the impeachment shall continue in session until 6 o'clock. Is there objection?

Mr. PETTUS. There is objection. Unanimous consent will not be given.

The PRESIDING OFFICER. The Senator from Alabama objects.

Mr. TELLER. I move that the session of the Senate sitting in the impeachment trial be continued until 6 o'clock to-day.

The PRESIDING OFFICER. The Senator from Colorado moves that the Senate sitting in the impeachment trial continue in session this day until 6 o'clock. Is the Senate ready for the question? The question is on agreeing to the motion.

The motion was agreed to.

The PRESIDING OFFICER. The counsel will proceed.

Mr. HIGGINS. Mr. President, I must ask the pardon of the Senate for having read the description of the land in the declaration in the case of Florida McGuire against the Pensacola City Company. But it was necessary to make it perfectly clear to the court that that description contained no evidence or notice to anybody outside that it contained within its limits block 91. So there was nothing from the suit itself to let Judge Swayne know that that land was involved in block 91 at the time the negotiations were conducted between him and Watson & Co.

The first actual notice either Judge Swayne or his agents, Watson & Co., had of block 91 being in the McGuire litigation over the Rivas grant was when Edgar sent them the quitclaim deed and refused to give a warranty deed because of the disputed title aforesaid.

I do not leave out of account that Hooten testified that Judge Swayne said to him at the time he was negotiating for it that this was involved in the suit over the Caro grant, and that it would disqualify him in this court. I mention it now only to dismiss it as a matter of no account. It did not create any title in Judge Swayne; it created no title in Mrs. Swayne; but if it were a fact, it is contrary to the re-

spondent's recollection, and it only showed that there was evidence to him earlier of its being involved in it.

As I have already said, Mr. President, this court must consider this case as it was presented, contested, and adjudicated before Judge Swayne in the circuit court in and for the northern district of Florida. That brings me, therefore, to the consideration of the charges against Belden and Davis, their denials and admissions as contained in the pleadings upon which they were tried; and although this has been read more than once to the Senate, I will now ask the Secretary to again read Mr. Blount's motion upon which the rule to show cause was founded.

The PRESIDING OFFICER. The Secretary will read as requested.

The Secretary read as follows:

And now comes W. A. Blount, an attorney and counselor at law of this court, and practicing therein, and as amicus curiæ, and moves the court to cite Simeon Belden, Louis Paquet, and E. T. Davis, attorneys and counselors of this court, to show cause before this court, at a day and hour to be fixed by the court, why they shall not be punished for contempt of the court in causing and procuring, as attorneys of the circuit court of Escambia County, Fla., a summons in ejectment, wherein Florida McGuire is plaintiff and the Hon. Charles Swayne is defendant, to be issued from said court and served upon the judge of this court, to recover the possession of block 91 in the Cheveaux tract, in the city of Pensacola, Fla., a tract of land involved in a controversy in ejectment then depending in this court in a case wherein the said Florida McGuire was plaintiff and the Pensacola City Company et al. were defendants, upon the grounds:

1. That the said suit in ejectment against the judge of this court was instituted after a petition to this judge to recuse himself in the said case of *Mrs. Florida McGuire v. Pensacola City Company et al.* had been submitted to the court on November 5, 1901, and denied, and after the said judge had stated in open court and in the presence of the said counsel, Simeon Belden and Louis Paquet, that an allegation of the said petition that he or some member of his family were interested in or owned property in said tract was untrue, and had stated that he had refused to permit a member of his family to buy land in said tract, because the said suit of Florida McGuire, involving the title to the said tract, was in litigation before him, the said judge.

2. That after the said declaration of the said judge the said counsel were aware that neither the said judge nor any member of his family were the owners of or interested in any part of the said tract and had no reason whatever to believe that he or they were so interested, and knew, or could easily have known, that the said block was not in the possession or control of anyone, but was entirely unoccupied.

3. That the said suit against the said judge was instituted on Saturday night, the 9th instant, after 6 o'clock, and after the court had overruled the motion of the said attorney to postpone the trial of the case of *Florida McGuire v. Pensacola City Company et al.* for a week or more, and after the said judge had announced to the said counsel that he would call the case for trial on Monday, November 11, 1901, and would then try the case unless counsel for plaintiff made a showing why he should not so try, and the said counsel had announced that they would make such showing.

4. That the said E. T. Davis was, before the instituting of the said suit against the said judge, cognizant of all the facts herein set forth.

W. A. BLOUNT,
An Attorney of this Court.

NOVEMBER 11, 1901.

Mr. HIGGINS. Mr. President, I will now ask the Secretary to read the answer of Belden and Davis.

The PRESIDING OFFICER. The Secretary will read as requested.

The Secretary read as follows:

Before the Hon. Charles Swayne, judge circuit court United States, northern district of Florida. In re matter of contempt proceedings against Simeon Belden, Louis Paquet, and E. T. Davis.

And now comes Simeon Belden and E. T. Davis, and for reasons why they should not be punished by contempt, sheweth:

First. That the grounds upon which the said contempt is based, to wit, summons

in ejectment issued from the circuit court of Escambia County, Fla., wherein Florida McGuire was plaintiff and the Hon. Charles Swayne was defendant, that said proceedings is in the jurisdiction of the circuit court of Escambia County, Fla., and that this court is without jurisdiction thereof.

Second. That the petition to recuse referred to in said motion they had nothing to do with before this court, nor were they present on the 5th day of November when submitted, as stated in said motion, nor present when any statement made by the judge concerning his connection with any of the property, except the statement made by said judge on November 11, after court convened and after the motion to discontinue the case of Florida McGuire v. Pensacola City Company, et al., was made.

Third. To the second paragraph sheweth: As above stated, they heard no declaration made by the judge referred to in said paragraph, and as for reasons to believe that he, Judge Swayne, or some member of his family was interested in block 91, Rivas track of land, named in said summons, we simply refer to the declaration made by Hon. Charles Swayne on November 11, 1901, when said motion was made by the Hon. W. A. Blount, and that after hearing said declaration, believe that there is in existence a deed to Mr. Charles Swayne, uncanceled, and that they have no knowledge of its repudiation, and as the negotiation for the property named in said deed was one made by Mrs. Charles Swayne in her individual right, that no act of the said Hon. Charles Swayne would repudiate or render null and void any transaction made by Mrs. Charles Swayne with her own money or property.

Fourth. That E. T. Davis for himself sheweth: That this court had no jurisdiction over him in said matter of Florida McGuire v. Pensacola City Company et al. until he requested the court to mark his name as attorney for plaintiff on the morning of November 11, when he presented the motion to discontinue the aforesaid suit.

SIMEON BELDEN.
E. T. DAVIS.

Mr. HIGGINS. Mr. President, I now beg the attention of the court for a moment while I compare the allegations of this motion and the answer. The preamble of the motion itself is important in its allegations. Mr. Blount's motion was to cite Davis and Belden to show cause why they should not be punished for contempt as attorneys of the circuit court of Escambia County in bringing suit against the judge to recover land in litigation before him in this court or in the United States court, to which the answer of Belden is:

First. That said proceedings are in the jurisdiction of the circuit court of Escambia County, Fla., and that this court was without jurisdiction therein.

So that their claim of defense to the rule was that the bringing of the suit in the State court was an act which, as an act of contempt, could only be within the jurisdiction of the State court, out of which the processes issued, and was not within the jurisdiction of the United States court whose judge had been sued.

The first paragraph of the motion was in three branches:

(1) That said suit was brought after [November 5] a petition to recuse was submitted and denied.

(2) After the Judge in open court and in the presence of Belden and Paquet had denied any title in himself or family.

(3) And had stated he had refused to permit a member of his family to take title, because the land was involved in the McGuire suit before him.

Now, note the answer of Belden and Davis to those allegations:

First. That said proceedings are in the jurisdiction of the circuit court of Escambia County, Fla., and that this court was without jurisdiction therein.

Second (to article 1). That the petition to recuse before this court they had nothing to do with. That they were not present November 5, when submitted, nor when the Judge made any statement, except on November 11, after motion to discontinue F. McGuire suit was made.

I asked the witness Davis the question on cross-examination whether he, at the time he brought the suit, did not know that Judge Swayne

had declared from the bench that he had no title in this land, that no member of his family had, and that he had refused to let any member of his family take title in it because of this suit. I asked him if he did not know that the Judge so stated, and I asked him, "Why in your answer did you not say so at that time?" to which he replied, "I thought I did say so."

Mr. Manager OLMSTED. And he did.

Mr. HIGGINS. But he did not. Here is the answer. There is not one word of that. What he says is that the petition to recuse before this court they had nothing to do with; that they were not present on November 5, when submitted, nor when Judge Swayne made any statement, except on November 11, after the motion to discontinue the F. McGuire suit was made.

Why, Mr. President, whether they were present or not, Judge Paquet was present. He was their associate counsel; he was the one who was there representing their clients, their principals, and knowledge to him was knowledge to his clients and notice to his associate counsel. Then was their day in court to come in before Judge Swayne and say, "Why, if your honor please, we did not know you said that. We were not here and did not hear you. If that is what you said, then we take it back. We brought this suit against you in ignorance of the fact, and so we will withdraw that litigation and purge ourselves of this contempt."

Why, Mr. President, that case would never have gone to any punishment for contempt; and it did not in the case of Paquet when he came in and made just such an acknowledgment—made an acknowledgment that he had acted in contempt. But those gentlemen in such a case as that would absolutely have been able to purge themselves from any intent. Instead of that, they rest content with the statement that they were not present in court and did not hear the Judge in what he said. They never alleged that they had not otherwise heard and did not know what he had said from the bench.

Now, as to the second article.

Second. After the declaration of the Judge, (1) the counsel were aware that neither he nor his family were owners of lot 91; (2) had no reason to believe that he or they were so interested; (3) knew, or easily could have known, that said lot was unoccupied and in the possession and control of no one.

Their answer to that, Mr. President, is this:

They heard no declaration made by the Judge.

And as to believing that Judge Swayne or some member of his family was interested in block 91, Rivas tract of land named in said summons, we simply refer to the declaration of the Judge on November 11, and after hearing such declaration we believe there is an uncanceled deed to Mrs. Swayne, one made to Mrs. Swayne in her individual right, and that no act of Hon. Charles Swayne could render null and void any transaction made by Mrs. Charles Swayne with her own money or property.

Not one word, Mr. President, that they had heard that the Judge disclaimed having any interest in it himself or of any member of his family having an interest in it. On the contrary, here is an evasive answer; they do not purge themselves of the contempt, but reiterate it.

The third allegation of the motion was:

Third. That suit against the Judge was instituted on Saturday night, after motion to postpone for a week or more had been overruled, and case set for Monday.

The answer to that is nothing. There is no answer at all.

The fourth touches Davis alone:

Fourth. That before the suit against the Judge, Davis was cognizant of all the facts.

He does not deny this in his answer, but says that this court had no jurisdiction over him until he marked his name on the record on Monday to move to discontinue.

In the face of that record, made by them when they had their day in court, how can they come before this court and undertake to ask it to believe that they had stated that they did not know of the Judge having made any such statement from the bench, and did not know that Mrs. Swayne had no title or interest in the property. Indeed, up to this time Mr. Belden claims that she does have such interest, and they have carried the case up the Supreme Court of the United States with the contention that she does have such interest.

Now, Mr. President, the question before this court is not merely whether Davis and Belden acted in a contemptuous way toward Judge Swayne and the circuit court of the United States for the northern district of Florida, but it is whether or not their act of contempt brought them within the jurisdiction of that court under the terms of the act of Congress passed in 1831, and now known as "section 725 of the Revised Statutes." Our proposition is that the bringing of the action of ejectment against Judge Swayne and the publication of the newspaper article on the following morning together constituted such misbehavior on the part of Belden and Davis as attorneys and counselors of the court as to constitute contempt within the terms of section 725 of the Revised Statutes of the United States.

I shall not at this stage of these proceedings go at large into the authorities upon the subject of jurisdiction under the act of Congress of 1831. It so happens in this case that the question has already been decided, and, I respectfully submit, concluded for all concerned. After the judgment of Judge Swayne, which included imprisonment as well as fine, Davis and Belden at once sued out writs of habeas corpus before Judge Pardee, who made the same returnable before Circuit Judges McCormick and Shelby, as well as himself, who all heard the argument and concurred in the opinion. I will ask the Secretary to read the opinion.

The PRESIDING OFFICER. The Secretary will read as requested.

The Secretary read as follows:

Pardee, circuit judge.

Section 725 of the Revised Statutes of the United States reads as follows:

"The said courts shall have power to impose and administer all necessary oaths, and to punish, by fine or imprisonment, at the discretion of the court, contempts of their authority: *Provided*, That such power to punish contempts shall not be construed to extend to any cases except the misbehavior of any person in their presence, or so near thereto as to obstruct the administration of justice, the misbehavior of any of the officers of said courts in their official transactions, and the disobedience or resistance by any such officer, or by any party, juror, witness, or other person, to any lawful writ, process, order, rule, decree, or command of the said courts."

The relator is an attorney and counselor of the United States circuit court for the northern district of Florida, and as such one of the officers of the court within the intent and meaning of the above statute. As such officer he was and is charged with conduct in and out of court which, if accompanied with malicious intent or had the effect to embarrass and obstruct the administration of justice, was such misbehavior as amounted to contempt of court. To hear and decide whether the relator was guilty of such contempt, and if found guilty to punish him for such conduct, was clearly within the jurisdiction of the court, and the court having exercised such

jurisdiction and found the relator guilty of contempt, its finding against the relator can not be reviewed on habeas corpus. (In re Swan, 150 U. S., 637.)

In *United States v. Pridgeon* (153 U. S., 48, 62), the court says:

"Under a writ of habeas corpus the inquiry is addressed not to errors, but to the question whether the proceedings and the judgment rendered therein are, for any reason, nullities, and unless it is affirmatively shown that the judgment or sentence under which the petitioner is confined is void, he is not entitled to his discharge."

Mr. HIGGINS. I call the attention, Mr. President, of the court to the breadth of this decision. It not merely held that the judgment of Judge Swayne could not be reviewed, because the question whether Davis and Belden had been guilty of contempt was within the jurisdiction of his court, but it went further. After repeating the language of the statute, it says:

The relator is an attorney and counselor of the United States circuit court for the northern district of Florida, and as such one of the officers of the court within the intent and meaning of the above statute. As such officer he was and is charged with conduct in and out of court which, if accompanied with malicious intent or had the effect to embarrass and obstruct the administration of justice, was such misbehavior as amounted to contempt of court.

That amounted to a decision that Judge Swayne had jurisdiction which could not be revised on habeas corpus, but that a case had been made which, if true, brought it within the terms of the act of 1831, or section 725 of the Revised Statutes.

This ruling, invoked by Davis and Belden themselves, settled the law of the case for them, for Judge Swayne and the circuit court for the northern district of Florida, and for all its people, namely, that if they were guilty of the acts charged then it was such misbehavior as constituted contempt of court under section 725 of the Revised Statutes.

I submit that—

1. The suit against Swayne was misbehavior of the most gross description and character in their official transactions as attorneys of his court, in the case of the same plaintiff against the Pensacola City Company et al.

2. It was at the same time misbehavior within the terms of the statute in that it constituted disobedience and resistance by them as attorneys in the suit against the Pensacola Company to the lawful decree and order of the court; and,

3. It was, under the decisions, misbehavior so near the court, as to obstruct the administration of justice.

It is clear to a demonstration that their object in bringing the suit was to effect the action of the Judge on the two points upon which he had during the week decided against them, namely:

(a) To force him not to sit in the case, or, in other words, to recuse himself; and,

(b) To force him to postpone the trial on Monday, the 11th.

This is made clear by another act of contempt to the same end, and, if possible, more flagrant and outrageous, in their newspaper publication on Sunday morning, which I will ask the Secretary to read.

The Secretary read as follows:

JUDGE SWAYNE SUMMONED AS PARTY TO THE SUIT IN CASE OF FLORIDA M'GUIRE V. PENSACOLA COMPANY ET AL.

A decided new move was made in the now celebrated case of Mrs. Florida McGuire, who is the owner by inheritance and claims the possession of what is known as the "Rivas tract," in the eastern portion of the city, near Bayou Texas, by the filing of a

præcipe for summons, through her attorneys, ex-Attorney-General Simeon Belden, Judge Louis P. Paquet, of New Orleans, and E. T. Davis, of this city, in the circuit court of Escambia County, in an ejectment proceedings for possession of block 91, as per map of T. C. Watson, which is part of the property which is claimed by Mrs. Florida McGuire, and which is alleged that Judge Swayne purchased from a real-estate agent in this city during the summer months and which is a part of the property now in litigation before him.

The summons was placed in the hands of Sheriff Smith late last night for service. Filed November 12, 1901.

Mr. HIGGINS. Mr. President, the original has already been produced before the court and will be put in evidence by us in Mr. Paquet's handwriting. It starts with the flaring headline:

Judge Swayne summoned as party to the suit in case of Florida McGuire v. Pensacola Company et al.

It goes on:

A decided new move was made in the now celebrated case of Mrs. Florida McGuire, etc.

The learned managers say that the suit against the Judge had nothing to do with the suit before the Judge; but this publication is not only scandalous; it is telltale. This shows their purpose. This uncovers and discloses the scheme. This tells the whole story.

A decided new move was made in the now celebrated case of Mrs. Florida McGuire, who is the owner by inheritance and claims the possession of what is known as the "Rivas tract," in the eastern portion of the city, near Bayou Texas, by the filing of a præcipe for summons, through her attorneys, ex-Attorney-General Simeon Belden, Judge Louis P. Paquet, of New Orleans, and E. T. Davis, of this city.

They were the ones who did it. No doubt about that they knew. No scurrying for cover for them at that time as to what they intended. No endeavor to get from under the responsibility of their acts. It throws it out upon the camera for all to read and to the scandal of the court.

In an ejectment proceeding for possession of block 91 * * * which is part of the property claimed by Mrs. Florida McGuire * * * and which is alleged that Judge Swayne purchased from a real-estate agent in the summer months * * * and which is a part of the property now in litigation before him, * * * the summons was placed in the hands of Sheriff Smith late last night for service.

This is the story of the new movement in the suit before Judge Swayne:

Judge Swayne summoned as party to the suit in case.

It was false that Judge Swayne purchased block 91, as now is perfectly obvious to every member of this court, as I have already shown at the outset of my remarks. But the judge had so solemnly declared from the bench in what amounted to a judgment that he would not recuse himself, one which they could have reduced to a judgment of record had they taken the proper course by presenting their petition and having his judgment put upon the record, so that it would be carried up. But it had all the moral force of that, and here comes this statement in the paper that the statement was a lie and that he was a liar. That is what that statement amounted to.

It was a new move—the suit against the Judge—a decided new move in the now celebrated Pensacola City case.

It was a new move in that case by these three attorneys in all the glory of their titles of attorney-general and judge.

And that new move—namely, the suit leveled at the Judge—hot on the heel of his refusing their motion to postpone the trial, and brought

that night, so as to make sure of the writ being served before the time set for trial on Monday morning—this new move was now driven home by this publication.

(1) The court had on Monday, November 5, made its decision and entered its judgment refusing the application to the Judge to recuse himself.

Therein and thereby it had judicially made a lawful order or decree.

Upon Saturday, the 9th, it made another judicial and lawful order in the cause, when it refused to postpone the trial, but ordered that it should be set for trial on Monday, the 11th, at 10 a. m., except for good cause to be then shown.

The suit and the publication were two blows, but making one movement, directed at the Judge for his judicial judgments adverse to the clients of these attorneys.

The suit laid ground for the article; the article gave point to the suit; the suit haled the Judge into another court to punish him for what he had done in his own, and the news article haled him before the bar of public opinion, and, if well founded, gibbeted him as a judicial outlaw.

(2) But if the suit was not brought and the article published to deter him from sitting in the case and trying it on Monday, for what object were both acts done?

Men are held to intend the natural consequences of their acts.

Certainly the suit was not brought with any idea of recovering thereby from Judge Swayne block 91, for they knew he did not own it or have any possession of it.

Neither was it brought against him because there was any title in Mrs. Swayne, for if there had been title in Mrs. Swayne she was the party to sue and he was not, except as it might have been proper or necessary to join him with her as a party codefendant.

(3) Again, if, as they since claim, when they brought the suit against the Judge, they had already determined to discontinue the main suit against the Pensacola City Company et al. on Monday morning, and then bring another suit on the same cause of action—that is, on the Rivas claim, on the old Spanish grant—why did they not wait to join the Judge or his wife in this renewed suit (there were about thirty defendants) instead of suing him as an individual and sole defendant that night in another suit in the State court?

(4) But why this haste?

The judge had just announced he would try their case on Monday.

There was no cause to fear he would leave town and escape their process.

They rush from the United States court room to the corner grocery, they hatch out the product of their conspiracy, order the writ, and make sure to have it served that night.

Mr. Belden says here that he did not have an idea of not discontinuing that suit upon Monday morning. Why, then, was this a new move in the Florida McGuire case? "Oh, but I never wrote that article." Mr. Belden thinks it was very ill-advised. Davis says, "I did not write it." No, gentlemen, you did not write it, but neither of you say you did not know about it.

Mr. Manager DE ARMOND. They both swore they did not know about it.

Mr. HIGGINS. Not as I remember the testimony.

Mr. Manager DE ARMOND. It is there.

Mr. HIGGINS. I ask the learned manager in his time to point it out to me. He will have his time.

Mr. Manager DE ARMOND. We will point it out.

Mr. HIGGINS. But whether they did or not, the case charged in the answer of the respondent here against these parties is that here was an unlawful combination. The case that was charged against them before Judge Swayne in the contempt case was that it was an unlawful combination, and here is the evidence that proves it. They can not repudiate in law or in fact the utterance and the confession of their coconspirator. If that was their point, I again ask why they did not put it in their answer? Why did they not make that case before the Judge and before the court when he was called upon to act upon it?

Mr. Manager OLMSTED. If the learned counsel will permit a suggestion, it is probably because there was no such charge in the information.

Mr. HIGGINS. The rule upon them was to show cause why they should not be punished for contempt for bringing the suit. The article is their confession as to why they brought the suit, and that it was leveled at the judge to affect his action in the case is shown by "the new move" in the Florida McGuire case against the Pensacola City Company. It will not do to roll all this over on Paquet and say, "We had nothing to do with it."

Now, with such flagrant disrespect and contempt shown the court, and I ask this court in all solemnity, what was the judge to do? Is a court justified in lying supine under such contempt? Could it ignore this open and double blow at its commands and its dignity, aggravated into a public scandal, and yet retain the respect of the community? Was it not bound, in sheer self-defense, to take the action it did?

I beg to read to the members of this court the words that have come down from the lips of one of those among the great men of our American Republic. The first important suit and litigation akin to the one now before this court was the case of Yates against Lanning, in which Chief Justice Kent, in 5 Johns, gave utterance to words I will read. In that case, I will say to the court, Chancellor Lanning imprisoned for contempt a clerk for signing the name of another solicitor to a bill or other paper in a chancery cause, which was contrary to good order and propriety. For that the chancellor adjudged him guilty of contempt.

Mr. Ambrose Spencer, who many years afterwards was one of the managers of the impeachment against Judge Peck, and who was one of the associate judges of the superior court of which Kent was at the time chief justice, discharged Yates upon habeas corpus. Chancellor Lanning instantly reimprisoned him. Spencer again discharged him, and the third time Lanning reimprisoned him, and then Yates brought suit against Chancellor Lanning for a penalty of \$1,000 under the statute which provides that penalty if a writ of habeas corpus be resisted; and that was the case which was before the court when Chief Justice Kent made this utterance:

Judicial exercise of power is imposed upon the courts. They must decide and act according to their judgment, and therefore the law will protect them. The chancellor, in the case of the plaintiff, was bound in duty to imprison and reimprison him, if he considered his conduct as amounting to a contempt of his court. The obligations of his office left him no volition. He was as much bound to punish a contempt committed in his court as he was bound in any other case to exercise his power.

In all confidence, I ask of this court, what member of it, sitting where Judge Swayne did, would not have cited, heard, and punished these attorneys as he did?

This conduct was misbehavior on the part of Davis and Belden as officers of the United States court in their official transactions under the terms of the act of 1831, because of the insult and gross disrespect thereby shown the court.

I have shown it had made two orders, which, as officers of the court, they were in duty bound to respect.

Both rulings were in refusing applications made by them; but though adverse decisions, they were none the less entitled to their respect.

An attorney is an officer of the court. Judge Pardee so held in this case:

The relator is an attorney and counselor of the circuit court for the northern district of Florida, and as such one of the officers of the court. (*Ex parte Davis*, 112 Fed., 139.)

And as such officer his duties have been best defined in *Bradley v. Fisher* (13 Wall., 355):

But, on the other hand, the obligation which attorneys impliedly assume, if they do not by express declaration take upon themselves, when they are admitted to the bar is not merely to be obedient to the Constitution and laws, but to maintain at all times the respect due the courts of justice and judicial officers. This obligation is not discharged by merely observing the rules of courteous demeanor in open court, but it includes abstaining out of court from all insulting language and offensive conduct toward the judges personally for their judicial acts.

There is a statement by the highest court in the land to these lawyers as to what was their obligation to the court. "This obligation is not discharged by merely observing the rules of courteous demeanor in open court, but it includes abstaining outside of court from all insulting language and offensive conduct toward the judges personally for their official acts."

You have had the evidence here this afternoon from General Belden that it was because of these judgments that they brought the suit.

Mr. SPOONER. If it will not at all incommode the counsel, I should like to inquire, through the Presiding Officer, what time the answer of Mr. Paquet in the contempt proceedings was filed?

Mr. HIGGINS. I will state that I am instructed that it is a part of the record of the proceedings in the court, but I think the paper that was filed of record in the court was one that Judge Paquet prepared when he came in some time afterwards. In the interval he had sued out a writ of prohibition from the circuit court of appeals, but it had been adjudged against him, and when that was done he came into court in Pensacola and made his apology and was discharged. Now, afterwards he was examined as a witness before the investigating committee, and there his testimony appears. Unfortunately for us in this case, as the Senate is aware, we have been unable to obtain his attendance because of the return of his physician that he is too ill. I will state to the court that I have verified on my own inquiry that he is suffering from pneumonia and complications, and therefore can not attend. I hope that is an answer to the Senator's inquiry.

Now, we submit that the conduct of Davis and Belden was contempt under section 725, Revised Statutes, in that it was "misbehavior so near the court as to obstruct the administration of justice." Of course

I am now assuming as established for the purpose of this argument that the object in bringing this suit was because of the judgments that the judge had given, refusing to recuse himself on the one hand and refusing to postpone the trial of the case on the Monday morning, and they brought this action hurriedly and hastily in the meantime with the end and purpose stated in the article published in the Pensacola newspaper.

Now, it was held in the case in *re Brule* (71 Fed., 943) that—

Bribing a person who is known to be a material witness in a pending cause to hide himself and remain away from the court, thereby preventing his testifying in such case, is a contempt of court, whether such person has been subpoenaed or not, and though punishable by indictment, under Revised Statutes, section 5399, is also punishable under Revised Statutes, section 725, as a contempt committed by misbehavior "so near" to the court "as to obstruct the administration of justice," though the act is done at the residence of the witness, at some distance from the court-house, in the town where the court sits.

In that case Judge Hawley, sitting in the district court of Nevada, after reviewing the cases bearing on the point from the Supreme Court of the United States and the Federal Reporter, goes on to say:

Now, from the reasoning of these cases it is made perfectly clear that the misbehavior of which *Brule* is guilty, if it had occurred anywhere within the building where court is held, would have been "clearly a contempt, punishable as provided in section 725 of the Revised Statutes, by fine or imprisonment, at the discretion of the court, and without indictment." Why? Because, under such circumstances, it would have been misbehavior of a person in the presence of the court. But the statute says that the misbehavior of a person "so near thereto as to obstruct the administration of justice" may be likewise punished as a contempt of court. If it is a contempt to bribe a witness in front of the court-house door, is it not a contempt to attempt to do the same thing on the street opposite the court building or four blocks away? Is not the result the same? Is not the motive of the accused the same? What difference does it make whether the attempt was made on the ground owned by the United States or at the residence of the witness in the same town four blocks, or about one-quarter of a mile, away from the court building? In one case the misbehavior would be construed to be in the presence of the court, and in the other "so near thereto as to obstruct the administration of justice," and the statute, in clear language, is made to apply to both cases.

It is too near the hour of adjournment, Mr. President, for me to read or have read the important decision, as we conceive it, of the supreme court of the State of Ohio in *Myers v. The State*, in 46 Ohio, 473, where that court upheld proceedings for contempt under the statute of the State of Ohio, which was a reenactment of the Federal statute in the same terms, where there was a libel printed in Cincinnati upon the court sitting in Columbus, and the court say:

The publication came within section 5639, Revised Statutes, which reads: "A court, or judge at chambers, may punish summarily a person guilty of misbehavior in the presence of or so near the court or judge as to obstruct the administration of justice." It is true that the article was not written, nor was it circulated, by the respondent in the presence of the court. Indeed, it was written in the city of Cincinnati, though dated at Columbus. But the publication was in the court room, as well as elsewhere. It was intended to have effect, and did have effect, in the court-house at Columbus, and the writer was just as much responsible for that effect as though he had in the court room itself, and while the trial was progressing, circulated and read aloud the article or uttered the libelous words verbally. The acts were thus done, if not in the very presence of the court at least so near thereto as to obstruct its business.

Therefore we say under these authorities that the action of these two lawyers in bringing the suit and making this insulting and scandalous publication was in the same terms violating the statute by obstructing the administration of justice near the court.

I think now it has reached the hour when I will end for the time being.

Mr. FORAKER. I move that the Senate sitting as a court for the trial of the impeachment adjourn until 2 o'clock to-morrow.

The motion was agreed to; and (at 6 o'clock p. m.) the Senate sitting as a court adjourned until to-morrow, Tuesday, February 21, at 2 o'clock p. m.

The managers on the part of the House, the respondent, and his counsel retired from the Chamber.

IN THE SENATE, *February 21, 1905.*

The PRESIDENT pro tempore. The hour of 2 o'clock has arrived, to which the Senate sitting as a court of impeachment adjourned. The Senator from Connecticut will please take the chair.

Mr. PLATT, of Connecticut, assumed the chair.

The PRESIDING OFFICER (Mr. Platt, of Connecticut). The Senate is now sitting in the trial of the impeachment of Charles Swayne, United States judge in and for the northern district of Florida. The Sergeant-at-Arms will make proclamation.

The Sergeant-at-Arms made the usual proclamation.

The PRESIDING OFFICER. The Sergeant-at-Arms will ascertain whether the managers on the part of the House are in attendance.

The managers on the part of the House of Representatives appeared, and were conducted to the seats assigned them.

The PRESIDING OFFICER. The Sergeant-at-Arms will ascertain whether counsel for the respondent are in attendance.

Judge Charles Swayne, accompanied by Mr. Higgins and Mr. Thurston, his counsel, entered the Chamber and took the seats assigned to them.

The PRESIDING OFFICER. The Journal of the proceedings of the last trial day will be read.

The Secretary read the Journal of the Senate sitting for the trial of impeachment of Charles Swayne Monday, February 20.

Mr. HALE. Mr. President, I ask that any rule which exists limiting proceedings in impeachment trials may be read to the Senate, and I also ask that the resolution submitted to the Senate in legislative session may now be read.

The PRESIDING OFFICER. The Secretary will read the resolution submitted in legislative session.

The Secretary read the resolution previously submitted by Mr. Hale, as follows:

Resolved, That all proceedings in the impeachment trial now before the Senate sitting as a court shall be terminated on Saturday, February 25, next, and a final vote shall be taken on the afternoon of that day at 4 o'clock.

Mr. MONEY. Mr. President, I should like to amend the phraseology of that resolution.

Mr. HALE. I do not offer it for action, because, of course, we can not act upon it now.

Mr. MONEY. I am speaking only as to the phraseology. The language of the Constitution is "the Senate sitting in impeachment trials." It does not anywhere say "sitting as a court."

Mr. HALE. When the Senate comes to consider the resolution in legislative session the form can be adjusted to suit the Senator.

Mr. BACON. I should like to understand the Senator. He says he does not now offer it.

The PRESIDING OFFICER. The resolution is not now before the Senate. It went over until to-morrow.

Mr. MONEY. I have suggested an amendment to it.

The PRESIDING OFFICER. With regard to the rules limiting the time, the Presiding Officer knows only of these rules:

XX. All preliminary or interlocutory questions, and all motions, shall be argued for not exceeding one hour on each side, unless the Senate shall, by order, extend the time.

The other is Rule XXIII:

XXIII. All the orders and decisions shall be made and had by yeas and nays, which shall be entered on the record, and without debate, subject, however, to the operation of Rule VII, except when the doors shall be closed for deliberation, and in that case no member shall speak more than once on one question, and for not more than ten minutes on an interlocutory question, and for not more than fifteen minutes on the final question, unless by consent of the Senate, to be had without debate; but a motion to adjourn may be decided without the yeas and nays, unless they be demanded by one-fifth of the members present. The fifteen minutes herein allowed shall be for the whole deliberation on the final question, and not on the final question on each article of impeachment.

Mr. FRYE. Mr. President, read Rule XXI, please.

The PRESIDING OFFICER. Rule XXI is as follows:

XXI. The case, on each side, shall be opened by one person. The final argument on the merits may be made by two persons on each side (unless otherwise ordered by the Senate, upon application for that purpose), and the argument shall be opened and closed on the part of the House of Representatives.

The Presiding Officer has noticed that in the Belknap impeachment trial questions arose at various times as to what amount of time should be given the managers and counsel for the respondent, respectively, in the argument of motions which were made, and that when those questions arose the Senate withdrew to its conference chamber and made an order as to the amount of time which might be taken by managers on the one side and counsel on the other.

Mr. HALE. Mr. President, I am familiar with the rules that have been read. My object in introducing the resolution which has just now been read in the Senate in legislative session was to lay the foundation for action on the part of the Senate, so that this proceeding may be limited and may not confiscate the entire time of the Senate. At a proper time in the Senate, as no rule limits this proceeding except in certain cases, I shall ask that the Senate shall formulate a body of rules, and I give notice now that the provisions which have just been read with relation to arguments to be made, so far as I am concerned, will be insisted upon literally.

Mr. Manager PALMER. Mr. President, I do not understand that there is any resolution or motion before the Senate at this time.

The PRESIDING OFFICER. There is none.

Mr. Manager PALMER. On the part of the managers I will say that if this proceeding is to be closed on Saturday at 4 o'clock in the afternoon we can of course make no objection to any order the court may make. Whether the testimony is ended or the arguments are concluded at that time will depend entirely upon how much time the Senate is willing to devote to this matter. The managers will ask, when

the case comes to be closed, for six hours in which to argue it. The rule confines the argument to two managers. I suppose there will be no objection to fixing some limit of time and allowing the managers to dispose of the time to suit themselves among themselves. It would not make any difference to the Senate whether two managers argued six hours, or whether five managers were allowed to go on for that length of time.

Mr. HALE. If the Presiding Officer will allow me——

Mr. BACON. I suggest that no discussion of this kind on the subject raised by the Senator from Maine is now in order, and it should not be permitted.

Mr. HALE. The Senator is correct, undoubtedly.

Mr. Manager PALMER. I understand perfectly that there is no discussion in order, but I simply remarked that if this case is to be heard and tried and must be finished on Saturday, the evidence on the other side may take until Saturday. We do not know how long they are going to take on their side, and we expect at least to have a few minutes to present the case to the Senate after it is concluded. As it will be observed, the case has been divided among the managers and each one has taken a particular branch of it, and if there is to be any presentation of the case, the gentlemen who have paid their attention to each particular branch must have some opportunity to say something on the parts of which they have had control.

Mr. BACON. I wish to say, in justice to myself, that what I said to the Chair was not designed to cut off the manager. I supposed he had concluded, and my criticism was really directed to the point that the matter had not been brought up at this time and I did not think it was the proper time for its discussion.

The PRESIDING OFFICER. Is Mr. Higgins, of the counsel, ready to proceed?

Mr. HIGGINS. Yes, sir, Mr. President.

The PRESIDING OFFICER. The counsel will proceed.

Mr. HIGGINS. I wish to assure the Senate, Mr. President, that it will be my endeavor to make my remarks as brief as possible consistent with the presentation of the case.

I wish to call attention to the fact that this is a court of first instance when the facts are first being presented to the tribunal and not a supreme court or superior court when matters of law alone are discussed after the facts have been settled and printed briefs reduce the time that counsel need to consume in the presentation of the case so as to make it fair both to them and to the interests they represent.

We propose, Mr. President, to present evidence on behalf of the respondent to contradict the statement of Belden and Davis that they made any statement to Judge Swayne at the hearing of their contempt proceedings before him, that they were not aware of the statement made by him on the 5th day of November on which he disclaimed any interest in the property in question.

We will further bring before the Senate evidence that they had been in telegraphic correspondence with Judge Pardee on this question arising out of their knowledge that Judge Swayne had disclaimed any such interest.

We will further show that on the habeas corpus before the circuit court of appeals they presented a number of new reasons—I think

as many as seventeen, but that is enough, anyway—why the court should reverse the ruling below, but those reasons contained no statement that they had told the Judge at the hearing that they had not heard him disclaim his interest in this property.

We further call the attention of the court to the testimony of the plaintiffs before the investigating committee, of those witnesses and parties, that there they made no such claim.

Now, proceeding with the discussion of the question, we submit:

Fourth. But whether or no the allegations and proofs bring the case within the true intent and meaning of section 725, Revised Statutes of the United States, it was within the jurisdiction of respondent, sitting as judge in this cause, to try and determine that very question, and a wrongful determination thereof was a judicial act, for which he is not impeachable, unless he so held from a corrupt or malicious intent, which intent is wholly lacking in this cause and can not be presumed from the fact that in imposing sentence he exceeded the law.

(1) The United States circuit court had jurisdiction to try and determine whether the acts of alleged contempt were within section 725 of the Revised Statutes.

I refer the Senate to what is already contained in the record and in my remarks of what was stated on that subject by Judge Pardee on the habeas corpus. Having jurisdiction of the persons, namely, Belden and Davis, and of the subject-matter, namely, that they were charged with contempt, and, therefore, having jurisdiction to determine whether the conduct complained of was within the limitations of section 725 of the Revised Statutes, the decision of Judge Swayne upon that question was a judicial act, and therefore one for which he was not liable in a civil action to Davis and Belden, but subject only to impeachment if his decision was either malicious or corrupt.

I now ask the Secretary to read what is said in *Bradley v. Fisher* by the Supreme Court on that subject.

The PRESIDING OFFICER. The Secretary will read as requested.

The Secretary read as follows:

In *Bradley v. Fisher* (15 Wall.) the court says:

"The exemption of judges of the superior courts of record from liability to civil suit for their judicial acts existing when there is jurisdiction of the subject-matter, though irregularity and error attend the exercise of the jurisdiction, the exemption can not be affected by any consideration of the motives with which the acts are done. The allegation of malicious or corrupt motives could always be made, and if the motives could be inquired into judges would be subjected to the same vexatious litigation upon such allegations, whether the motives had or had not any real existence. Against the consequences of their erroneous or irregular action from whatever motives proceeding, the law has provided for private parties numerous remedies, and to those remedies they must, in such cases, resort. But for malice or corruption in their action whilst exercising their judicial functions within the general scope of their jurisdiction, the judges of these courts can only be reached by public prosecution in the form of impeachment, or in such other form as may be specially prescribed."

Mr. HIGGINS. Mr. President, I ask leave to place in the record citations from the Supreme Court in the case of *In re Cuddy*, petitioner (131 U. S., 280, 295), and in *O'Neal v. United States* (190 U. S., p. 36) without reading.

The PRESIDING OFFICER. If there be no objection on the part of Senators or on the part of the managers, the matter referred to may be inserted in the record without reading. The Chair hears no objection.

The matter referred to is as follows:

In *Cuddy*, petitioner (131 U. S., 280, 295), the Supreme Court held that—

"A petitioner for a writ of habeas corpus to obtain his discharge from imprisonment under the judgment and sentence of a district or circuit court of the United States for contempt is at liberty to allege and to prove facts, not contradicting the record, which go to show that the court was without jurisdiction."

The court say:

"If the appellant had alleged such facts as indicated that the misbehavior with which he was charged was not such as, under section 725 of the Revised Statutes, made him liable to fine or imprisonment, at the discretion of the court, he would have been entitled to the writ, and, upon proving such facts, to have been discharged."

In *O'Neal v. The United States* (190 U. S., 36) the Supreme Court say:

"Jurisdiction over the person and jurisdiction over the subject-matter of contempts were not challenged. The charge was the commission of an assault on an officer of the court for the purpose of preventing the discharge of his duties as such officer, and the contention was that on the facts no case of contempt was made out."

"In other words, the contention was addressed to the merits of the case and not to the jurisdiction of the court. An erroneous conclusion in that regard can only be reviewed on appeal or error, or in such appropriate way as may be provided. *Louisville Trust Company v. Cominger*. (184 U. S., 18, 26.)"

Mr. HIGGINS. Was the conduct of Judge Swayne malicious in delivering this judgment and in imposing these penalties? It is not charged that it was corrupt. I shall not repeat the argument I have already submitted that these attorneys had misbehaved in violation of all three branches of section 725, and that Judge Swayne did right in holding them guilty and in punishing them; but the learned manager who opened the case contended further in his third proposition (record, p. 75) that Judge Swayne abused his power and should be convicted because his sentence was unlawful. Until this proposition is supported by some authority I shall not take the time of the court to reply to it.

We have just seen that a judge is not liable to a civil suit or to impeachment for a mere mistake of judgment, but only where his conduct is malicious or corrupt.

But under his fourth proposition the learned manager plants himself on the ground that—

If ignorant of the law he imposed the unlawful sentence with malice he is subject to impeachment and no man can say nay. (P. 77.)

He then proceeds to state his grounds of malice, which I shall endeavor to consider. Among his grounds for alleged malice are those which I now ask the Secretary to read.

The PRESIDING OFFICER. The Secretary will read as requested.

The Secretary read as follows:

(1) That the Judge did not himself, on his own motion, call the offending lawyers before the bar of the court, state to them the charges, submit to them the interrogatories that the law prescribes in every case of indirect contempt, and give them the opportunity to which they were entitled to purge themselves on oath. Since Blackstone wrote the law has never been changed in this particular.

"If a party can clear himself on oath, he is discharged." (*Burke v. The States*, 214 Ind., 528; 4 Bl. Com., 286, 287; *Wilson v. Walker*, 82 N. C., 95; *U. S. v. Dodge*, 2 Gall., 313, Circuit Court of the United States, first circuit of Massachusetts; *In re John I. Pitman*, 1 Curtis, 189; *In re Wilson v. Walker*, 82 N. C., 95.)

But Judge Swayne chose a different course. He selected the one man whose grist he had insisted upon grinding in his judicial mill, and who had been able, through Judge Swayne's refusal to recuse himself, to force a discontinuance of the case, and who might, therefore, be supposed to feel willing to do the dirty work of the Judge; to institute and prosecute the proceedings for contempt. This course indicated what Judge Swayne was after, and the state of mind with which he went for it.

Mr. HIGGINS. Mr. President, you have here the beginning of the case made by the managers why this judge having jurisdiction in the exercise of the judicial judgment should be convicted of having done it maliciously, so that you should convict him here. I beg to say that, in my opinion, it would be difficult to find in a paragraph so short so many misstatements both of law and fact.

In respect of each and every matter here not merely complained of by the learned manager, but soberly and gravely imputed by him to the Judge as clear evidence to convict him of malice, I submit that Judge Swayne acted with absolute propriety. In every instance he did the right thing; and every criticism the learned manager makes does violence to the deliberate utterance of the Supreme Court of the United States on the subject.

First. The Judge did right to have the charge made and supported by Mr. Blount. Mr. Blount was himself one of the defendants. He was leading counsel for all the defendants. He, more than any person connected with the case against the City Company, was the "party aggrieved." Of course the Judge himself was, more than any other individual, the aggrieved party, but only in his character as judge. The indignity, resistance, and contempt was of the court. It was therefore peculiarly proper and right for the court to be represented by a member of the bar acting as *amicus curiæ*, and it was a coincidence singularly happy that the "aggrieved party" to the suit was a lawyer and counsel for the defendants, and, moreover, the leader of the bar of that court, a leader of the bar of the circuit, and in the very front rank of the bar of the United States.

(2) There was no law or rule requiring the charges or motion of Mr. Blount to be sworn to, or

(3) That the interrogatories should be propounded to Davis and Belden.

In those three remarks I have covered the three causes of contempt set forth in what I had read by the Secretary. In fact all these details were within the control and regulation of the court. And the regulations made by the court were proper, namely, a written motion, notice thereof to the defendants, and a rule on them to show cause. This gave them the opportunity to answer, under oath, if they elected so to do. Now, that parties by statute can testify in their own behalf, the reason for propounding interrogatories has passed away. This course of proceeding, so strictly in accordance with the decision in the Savin case, is made by the honorable managers the evidence of malice upon which they in part ground their case.

I would now ask the Secretary to read what is said by the Supreme Court in *re Savin*. (131 U. S., 267.)

The PRESIDING OFFICER. The Secretary will read.

The Secretary read as follows:

It is, however, contended that the proceedings in the district court were insufficient to give that court jurisdiction to render judgment. This contention is based mainly upon the refusal of the court to require service of interrogatories upon the appellant, so that, in answering them, he could purge himself of the contempt charged. The court could have adopted that mode of trying the question of contempt, but it was not bound to do so. It could, in its discretion, adopt such mode of determining that question as it deemed proper, provided due regard was had to the essential rules that obtain in the trial of matters of contempt.

This principal is illustrated in *Randall v. Brigham* (7 Wall., 523, 540), which was an action for damages against the judge of a court of general jurisdiction, who removed the plaintiff from his office as an attorney at law on account of malpractice

and gross misconduct in his office. One of the contentions was that the court never acquired jurisdiction to act in his case, because no formal accusation was made against him, nor any statement of the grounds of complaint, nor a formal citation against him to answer them.

The court, after observing that the informalities of the notice did not touch the question of jurisdiction, and that the plaintiff understood from the notice received the nature of the charge against him, said: "He was afforded ample opportunity to explain the transaction and vindicate his conduct. He introduced testimony upon the matter, and was sworn himself. It is not necessary that proceedings against attorneys for malpractice or any unprofessional conduct should be founded upon formal allegations against them. Such proceedings are often instituted upon information developed in the progress of a cause, or from what the court learns of the conduct of the attorney from its own observation. Sometimes they are moved by third parties upon affidavit, and sometimes they are taken by the court upon its own motion. All that is requisite to their validity is that, when not taken for matters occurring in open court in the presence of the judges, notice should be given to the attorney of the charges made and opportunity afforded him for explanation and defense. The manner in which the proceedings shall be conducted, so that it be without oppression or unfairness, is a matter of judicial regulation."

So, in the present case, if the appellant was entitled of right to purge himself, under oath, of the contempt, that right was not denied to him; for it appears from the proceedings in the district court, made part of the petition for habeas corpus, not only that he was informed of the nature of the charges against him by the testimony of Flores, taken down by a sworn stenographer at the preliminary examination, but that he was present at the hearing of the contempt, was represented by counsel, testified under oath in his own behalf, and had full opportunity to make his defense.

Mr. HIGGINS. So that it appears from the decision of the Supreme Court that the motion need not be sworn to; that interrogatories need not be propounded, and that everything that was done under the rule was fair. But I may be excused for referring to an authority that may appeal even more strongly to my learned opponents, and that is a passage from the report of the majority of the House Committee on the Judiciary advising the impeachment of Judge Swayne. I find it incorporated in the opening speech of the chairman of the learned managers. I ask the Secretary to read it.

The PRESIDING OFFICER. The Secretary will read as requested.

The Secretary read as follows:

Presuming that Judge Swayne knew the law he knew that proceeding for a contempt not committed in the presence of the court must be founded on an affidavit setting forth the facts and circumstances constituting the alleged contempt, sworn to by the aggrieved party or some other person who witnessed the offense. Unless such affidavit be presented process will not be granted. (*Burke v. The State*, 47 Ind., 528; *Batchelder v. Moore*, 42 Cal., 412; *Rapalje on Contempts*, p. 122.)

Mr. HIGGINS. I erred in stating that the extract was from the speech the learned manager made before the Senate. It was in a debate in the House. But so it appears, Mr. President, that at that time Judge Swayne was deserving of impeachment because he had not had the motion presented by an aggrieved party under oath, the Supreme Court thinking that it did not have to be under oath. Where the aggrieved party presents it he is the person, in the opinion of the learned manager, "whom the Judge takes to do his dirty work, having been grinding his grist at the Judge's mill."

Now, Mr. President, I think that I have rather, with this quotation, shifted the issue as to where the malice is; that after this the burden of showing that he did not act with malice is taken off from Judge Swayne, when this ungrounded and unnecessary attack was made at once upon him and upon as blameless and eminent a lawyer, in the person of Mr. Blount, as can be found at the American bar.

Finally, the learned manager plants himself on the proposition that

for imposing an illegal sentence—both fine and imprisonment when the law made the penalty in the alternative—Judge Swayne should be convicted by this court, because he did it with malice. This argument can only go upon the theory that the double punishment was so severe as to prove malice. That brings me to the contention that the malice of the Judge is conclusively proven by the severity of the sentence—ten days in jail and a hundred dollars fine—and the severity of the reproof he administered to the attorneys in imposing sentence.

Before that, I beg to call the attention of the court to the part of the sentence as originally imposed that disbarred these attorneys for a term of two years. It is claimed that that showed malice because it was unlawful. I would again bring the attention of the Senate to the case of *Bradley v. Fisher*. That was not a case of contempt. That was a case of disbarment. Mr. Bradley, after the judge had descended from the bench and was about leaving the court room, if he had not got upon the street, approached him and threatened to chastise him. For that, the judge, sitting in the court, without a hearing and without a rule, sentenced him to disbarment. The Supreme Court of the United States set aside the judgment because Mr. Bradley had not had his day in court, but in their opinion they took occasion to lay down what has already been read in the course of my remarks, as to their sense of the duties of attorneys, and further, if a rule had been laid against Mr. Bradley and the case had been made against him for the act for which he was held to have offended, that it was within the jurisdiction of that court to have punished him by disbarment; but a rule ought to be laid for that purpose.

The case against Davis and Belden was a proceeding for contempt. It was not a proceeding for disbarment, but though the sentence of disbarment was illegal because a rule for disbarment had not been laid, it would have been absolutely within the right of the judge to have so sentenced them if he had laid a rule for disbarment; and I submit to the Senate that a case was made out here where that right ought to have been exercised, for if ever there was a case where a court had been treated with scandalous contempt it was by these two attorneys in this case.

But they say the severity of the punishment—ten days in jail and \$100 fine—is proof of malice. When it comes to authority, it was the opinion of Mr. Buchanan, one of the managers in the Peck case, that twenty-four hours was a very shameful and outrageous punishment; but it so happens that the learned manager himself suggests that if Judge Swayne had imposed twenty-four hours upon these defendants it would have been proper. So that what the learned manager thinks is proper Mr. Buchanan seventy-five years ago thought was excessive.

Well, the whole thing is relative. "Times change and men change with them." I can only say, without having searched the cases to find the maximum of punishment in such cases, that I would call attention to a recent case in 121 Federal Reporter, where the three circuit judges of the ninth circuit of the Pacific coast sentenced Wood and Frost—one of them United States attorney for Alaska and both of them attorneys of the court—one to four and the other to twelve months' imprisonment. I also beg to call the attention of the Senate for a moment to the very great difference between the gravity of the offense of Davis and Belden as compared with that which was charged against Lawless in Judge Peck's case. That case—as does this—grew out of a Spanish

grant where there were a number of claims under different grants, and it was a test case. Lawless printed in a St. Louis newspaper an article with seventeen paragraphs of what he called the assumptions of law and of fact of Judge Peck that were erroneous. On its face it bore no evidence of contempt, but was in every way respectful.

The question, therefore, arose in that case whether it was a contemptuous proceeding. Another question was whether it did not interfere with the liberty of the press. It was altogether different from the bringing of an unfounded suit against a judge to affect and influence him in orders that he had made in his court, and publishing an article in a newspaper that impeached his veracity in the community where he held the court.

Now, when it comes to what was said, Judge Peck's manner was criticised. Judge Swayne's has also been. We will give you the testimony of witnesses in the court who will tell you how his manner impressed them. What was said appears in a newspaper taken at the time by the reporter. We will show you what the other newspapers printed about it. The newspaper reports and the newspaper reporters themselves tell you that the Judge showed sadness in imposing penalty upon a man of Mr. Belden's age. It is said he called them ignorant. Well, it was charitable if he did—if he imputed what would otherwise be lawless conduct to ignorant conduct. Whether he said their conduct was a stench in the nostrils of the community or not is a matter that will be in dispute and we consider it immaterial whether he did it or not.

In O'Neal's case the Supreme Court said that *sui generis* it was a criminal proceeding; a criminal proceeding it was. The Judge was delivering a sentence in a criminal case, and it was not for him or any court in this Republic to know the difference between the standing of the men who had violated its laws. I do not care if a man is a member of that great profession which those who belong to it feel is their chiefest honor. If one of them, the votary of the law, the custodian of its honor, of that bar upon which lawyers know the American bench rests for the respect in which the community hold it—if those high priests of that temple defame and deface it they deserve to be held up to public opprobrium as much as the lowest criminal in the land. So much for the Davis and Belden case, Mr. President.

I think the Senate will agree that the O'Neal case has been treated with scant consideration. Very little was said about it by the learned manager who opened the case, and the manager who has charge of its prosecution submitted the record evidence, the stenographic report of the testimony. So while it is all printed in the record, it has not been heard in the Senate. Under the admonition of the resolution which has been presented to the Senate this afternoon, I shall not undertake to go into its facts at all in detail. I content myself at the outset with the baldest and briefest summary of its points.

One Scarritt Moreno was adjudged a bankrupt, and Adolph Greenhut in due course was chosen his trustee, a trustee under the bankruptcy act being the name given to a receiver. He gave bond, qualified, was in discharge of the duties of his office under the powers conferred by the bankruptcy act itself.

On Saturday afternoon, the 18th of October, 1902, Greenhut, through his counsel, filed a bill in equity in the circuit court of Escambia County, Fla., against Scarritt Moreno, his wife, the Citizens' National Bank, of

Pensacola, and the American National Bank, of Pensacola, of which last bank William C. O'Neal was the president. The bill set up that certain mortgages had been given by Moreno, the bankrupt, with his wife; that they were given without value, were fraudulent as against creditors, and had been assigned to these banks, and to the American National Bank among the others, with the knowledge on the part of the assignee of the vice and fraud of the original transaction.

On Monday morning Greenhut was talking with a friend at the door of his place of business, on the street, when O'Neal came up and said he wanted to see him. Greenhut told him he would see him in his store, and they went in. When they emerged they were clinched, and O'Neal had cut Greenhut from the ear to his lip, presumably in an effort to get at the jugular vein; had stabbed him three other times—over the ribs, over the hip, and in the elbow.

There are some discrepancies between the testimony of O'Neal and Greenhut, the only people who were present, but enough appears in the testimony, in the answer of O'Neal and his testimony, I believe, to make it clear that he was guilty, as the judge found. I will ask the Secretary to read so much of his answer as is contained in the clipping I send to the desk.

The PRESIDING OFFICER. The Secretary will read as requested.

The Secretary read as follows:

That it is not true that the assault charged in the said affidavit was committed by the respondent solely because and for the reason that the said Greenhut had instituted the suit aforesaid against the said American National Bank, or to interfere with and prevent him, the said Greenhut, from exercising and performing his duties as an officer of this court. That in truth the respondent never contemplated at any time any interference with the said Greenhut as trustee as aforesaid, or contemplated any affray with the said Greenhut, or any personal conflict with him until he saw the threatening attitude of the said Greenhut toward him, the respondent, as hereinbefore set forth, and that so far as respondent can determine from the actions of the said Greenhut, who was the aggressor as aforesaid, the cause of the said affray was the remark of respondent to the said Greenhut concerning the said Greenhut's action in repudiating his obligation to pay the said acceptance.

And respondent disclaims the existence on his part at any time of any intent to interfere with, prevent, impede, or delay the said Greenhut in the prosecution of the said suit against the said bank, or to interfere with or impede or prevent him in anywise in the execution or performance of any of his duties as such trustee; and specially disclaims any intent to do any act which might savor in the slightest degree of contempt of this honorable court.

W. C. O'NEAL.

Mr. HIGGINS. Now, I will ask the Secretary to read from O'Neal's examination in court.

The Secretary proceeded to read from the testimony of Mr. O'Neal.

The PRESIDING OFFICER. The Secretary will suspend for a moment. Why does the counsel claim that this is proper in an opening? The Presiding Officer supposed that the opening of a case on the part of the managers or on the part of counsel should be limited to a statement of the issues raised in the case, and what the parties propose to prove, either for the prosecution or the defense. How do these extracts which the Secretary has been asked to read fall within what the Presiding Officer supposes to be the proper line of an opening on behalf of the respondent?

Mr. HIGGINS. I will state, Mr. President, in the first instance, that a perusal of the statements of counsel in the Peck case shows that the managers went very fully into the merits of the case on the argument. Mr. Meredith, in opening for the respondent, did not. I thought,

therefore, that I was entirely within the rules of this anomalous proceeding, which is not by common law, is not in equity, but is according to the *lex et consuetudo parliamenti*. The articles and answers are drawn from the civil law. They are not known to our own practice, and therefore I have supposed that it was a proceeding where the largest latitude was given to counsel in the first instance.

In the second place, I desire to say, Mr. President, on this interesting point that the Greenhut testimony has not been read, and it is impossible to get a statement of the issues without it. I could have had read the affidavit of Greenhut; I could have read Greenhut's testimony, so as to get them before the court as to what they would show, but I have elected to leave them out, and was stating what O'Neal's was. Moreover, I thought it was the shortest way in which I could proceed.

The PRESIDING OFFICER. The Presiding Officer, of course, does not wish to limit counsel for respondent as to any of their just rights, but as was suggested a moment ago the Presiding Officer supposed that an opening on behalf of the person accused was to be confined strictly to the issues raised and what the counsel expected to prove, and how they expected to be able to prove it. This opening seems to have taken the form of an extended argument on the whole case, which the Presiding Officer had supposed would be more proper, to say the least, when the case came to be finally argued. Perhaps the Presiding Officer is only expressing a little the impatience of the Senate, and without attempting to fix limits, he wants to suggest that the opening should be concluded as quickly and as rapidly as counsel feel that it can be in presenting their case to the Senate.

Mr. HIGGINS. It is due to myself and my colleague to add to the other reasons that I have just given for the course we have taken the fact that the opening of the learned manager was in itself argumentative; and I have felt that it was incumbent upon me, in due regard to the interests of the respondent, that there should be fully presented to the Senate at this time the merits of this case as far as the testimony goes and as to what we propose to prove.

I wish, however, to say further that I propose to allow this testimony of O'Neal's to go without further comment by me. So I shall take but very little time on that point. If the Chair will permit the reading of that testimony to be completed, I will take that course.

Mr. Manager OLMSTED. Mr. President, may I make a mere suggestion at this time? While we have not cared to object, we have observed that for two hours and a half the honorable counsel has been discussing the evidence we have put in without telling us anything about what they propose to prove. We merely ask that the character of the argument which he has made, and which might more properly be made in closing, may be taken into consideration when the allotment of time for the closing arguments is considered.

The PRESIDING OFFICER. The Presiding Officer would perhaps have made no suggestion in this matter if it had not been for the extreme pressure on the time of the Senate.

The Secretary resumed and concluded the reading of the extract from Mr. O'Neal's testimony, which is as follows:

Q. Now, then, you proceeded until you came to Mr. Greenhut's, did you?—A. Yes, sir.

Q. Then state what occurred—exactly what occurred thereafter, anything and everything from the moment that you addressed him until the time that you were

finally taken apart.—A. I passed down the street, and I saw Mr. Greenhut and Mr. Lischkoff talking. I spoke to both. I says, "Good morning," and I says, "Mr. Greenhut, I would like to see you when you are at leisure," and Mr. Greenhut said, "I am at leisure now," and I says to Mr. Greenhut, "Don't let me interrupt you; any time during the day will do," and Mr. Lischkoff says, "I am through," and he left or started to turn to go back up the street toward his place of business, and Mr. Greenhut says, "Come in." He stepped back into the back part of his office there and I went on [in], and I asked him why he had sued us. He says, "Well, I do not know anything about it; you will have to see my lawyer about it." I says, "Mr. Greenhut, I think you do know something about it. I think you were a director of the American National Bank when this paper that I am sued on was sold and transferred," and I says, "We did not sue you when we had to sue you without seeing you about it or without talking to you about it. We did everything we could to avoid the suit; we did everything we could to get a settlement of that before we sued you," and I talked on with him regarding this matter in that way, and I reminded him of the fact that Mr. Eagan had tried to get a settlement with him before we sued him on the \$1,500 debt, and I found out after talking with him it seemed it was impossible to get a settlement with him that way, and I says to him—I finally told him that I thought that if he had been a gentleman he would not have done it, and he said, "I am as much a gentleman as you are"—being a director in the bank and refusing to pay a paper and letting us sue him on it, and he says he was as much of a gentleman as I am. I says, "Mr. Greenhut, I won't dispute that with you on that point. I do not want any trouble with you," and when I said that to him, why, he made a motion that way, like he would strike me with his fist, and says, "If you fool with me I will do you up here," and I says, "No, I reckon not," and I stood there for a moment hesitating, and I turned to go out. He come on following me and he said something to me. I do not know what he said, and when he said that, I told him that he lied to me about the Moreno paper, and as I told him that I turned around, and Mr. Greenhut he struck me here, and I struck him with my left fist, and then I shoved him off, and when I shoved him back he kind of stumbled back like—he looked to me like he almost fell down; then he came forward at me and I pulled out my knife and cut him, and we fought on out on the street there, and I made several lunges for him and he hit me several licks with his fist, and finally he caught hold of my arm here with his right hand, and after he caught my arms I reached around and caught hold of his other arm out in the streets, and then I holloed to old man Hyer to come there and get him—

Mr. HIGGINS. Mr. President, I will leave the facts of the O'Neal case where I had intended to leave them if I had not received the admonition, thinking that a general demurrer to the evidence before any intelligent and capable judge, let alone such a tribunal as this, is sufficient, as there is enough to show that there was the fullest ground for the course which the Judge took; that the answer was evasive, and, under the law as laid down by Blackstone, and not changed since, it was a contempt that the Judge was right in punishing. I shall not at this time add more to what I have already said in the O'Neal case.

Now, taking next the subject of residence, as set forth in the sixth and seventh articles, the case made by the learned managers in this is that Judge Swayne did not reside in his district because he did not reside in Pensacola, where he claimed to reside, and did reside at another fixed and given place, namely, Guyencourt, Del.

I will relieve the concern of the learned manager, who ventured to call attention to my failure to state what witnesses we would produce, by assuring him that we will produce witnesses, good Delaware witnesses, neighbors of Judge Swayne, neighbors of his father and his mother, who know all about the family, and we will establish by their testimony beyond any question, as we are instructed, that Judge Swayne was only a summer visitor to Guyencourt, and never since he moved to Florida had his residence there. We will lay before the Senate the certificate of the courts where he held court out of his district, beginning with 1895; when he held court in Texas, in New

Orleans, in Baton Rouge, in Huntsville, running through a period of five years.

We will show that a judge in Texas was stricken with softening of the brain and unable to hold court, and hence Judge Swayne had to do service in that district for years; that another judge was interested in a bank that failed, and Judge Swayne held two long trials in respect of that; that from the district to which he had originally been appointed, when the northern district of Florida included the Jacksonville section of the State, twenty counties were taken when the district was curtailed by the act of July, 1894; that thereupon Judge Swayne informed his friends, whom we will produce here, that he had, in pursuance of that statute, determined to make his residence in Pensacola; that as reasonably early as could be his family were brought there; but that the circuit judges, finding here a judge in the circuit with a district so curtailed by the act of Congress that he had time on his hands, drafted him for this service elsewhere.

We will further show by the testimony of witnesses that Judge Swayne was unable to find a suitable house, and hence did not bring his family there at once. We will further show that one or another of his children were pursuing his or her studies in Philadelphia, and that because of these three causes—the absence of the Judge from his home in holding court elsewhere for six or eight months in a year, because of his inability to get a suitable house, and the facts as to his children—his family did not go there until 1900, except as they paid him visits; that during one year his family went to Europe. They spent another winter in the city of Wilmington, the only time they spent a winter in Delaware; that one of his sons was grievously stricken with nervous prostration, from which he has not yet recovered, and that that controlled his domestic relations very much, and that because of all these facts it so happened that this was a broken household and not one that was held together as households ordinarily are.

We will show that the ordinary presumption that a man resides where his family resides is not the presumption of law nor a conclusive presumption either of fact or of law; that it is a presumption of fact of more or less weight, as an ordinary thing, but that it is rebuttable, as shown by the decisions of the Supreme Court of the United States, which I am prepared to bring to the attention of the Senate at this time; and that in this case all of these reasons prevented and kept the family of Judge Swayne from going to Pensacola to reside until 1900; and that the witnesses who testified here that the Judge did not live there were mistaken, going on the idea that where a man's family is there is where he lives, and that because he went away from Pensacola they assumed that he did not live there, they not knowing whether he was going to Texas, or to New Orleans, or Alabama, or some other place to hold court. So much for the residence.

I now come to the article upon the subject of false claim, false pretenses, leveled against Judge Swayne because under the act of Congress in that behalf he certified his expenses at \$10 a day. If this were an ordinary criminal case in a customary criminal court, I think the counsel for the defendant would be within their rights in moving that the jury be instructed to bring in a verdict for the defendant on the ground that no evidence has been brought here to show that Judge Swayne did not spend \$10 a day. But we do not choose to stand upon

the mere negation of evidence in that respect. We shall bring before the Senate the fact and certificates which show that the accounts of the Judge were passed upon by a succession of officers.

In the first instance, under the statute, it is required that the judge shall be paid for his reasonable expenses of traveling and attendance while holding court out of his district, in the one case, or in sitting in the circuit court of appeals away from his home in the other case; that the judge shall be paid by the marshal upon his own certificate as to the facts, and that the amount so paid shall be allowed to the marshal in his accounts. We will show that it has been the invariable rule throughout the United States, by every marshal and every other officer of whom I shall now speak, to allow these accounts on such certificates. The account of the marshal in the first instance, under the act of 1875, must be passed upon by the judge in the presence of the district attorney, whose presence shall be noted of record, and the judge shall hear evidence, if need be, and thereupon determine the matter as shall be according to law and justice.

We will show by the certificates which have been put in evidence by the learned managers that in two of the cases where he held court in Tyler the accounts of the marshal were passed upon by the local judge, Judge Bryant, and that every fact that has been adduced in testimony here by the Texas witnesses must have been known to the marshal, to the district attorney, and the judge, who did not feel themselves called upon to disallow the judge's accounts, but on the contrary did allow them; that in that case, as in all cases, the marshal's account then went to the Department of Justice, where it passed under the jurisdiction of its auditor; next to the Treasury Department, where it passed through the jurisdiction of the Auditor of the State and other Departments; next that it went to the Comptroller of the Treasury. It thus passes through six hands—the marshal, the district attorney, the judge, the two auditors, and the Comptroller.

We shall claim, Mr. President, that this evidence is corroborated by certificates which we shall introduce from the Treasury from 1895—I speak of fiscal years now—to 1903 of all the judges of the United States, with the exception of the justices of the Supreme Court of the United States.

We will show by these certificates that a majority of the judges placed upon the statute the construction put upon it by Judge Swayne, under which he made the certificates which are here charged as criminal acts; and that it thus shows an interpretation in act and fact by a majority of the Federal judiciary impressive in its character, and, as we submit, conclusive upon the construction of the statute; and that the judge in so certifying was treating it, as we have alleged in the answer, as compensation for his reasonable expenses in the nature of a fixed allowance.

We shall at the proper time bring to the attention of the Senate that long line of authority, when we only need, however, to refer to one or two of the cases in which statutes, nothing like as loosely drawn as this one, have been held to justify the officer in making the charge and in holding him free from liability.

We will claim on this article that here was a statute that at the worst was ambiguous, absolutely free from the certainty of construction the learned managers would give it, and that if it be ambiguous there can

he by no possibility the evidence of an intent upon the part of the Judge in making these open certificates for years to have a fraudulent intent or purpose to defraud the Treasury of the United States.

We will show, Mr. President, finally in respect of the articles concerning the use of a car that there is no impeachable offense. We have had no testimony submitted with respect to the article which charges the use of a car to California and return, further than the statement of a railroad conductor that the judge said he had gone on that car to California—nothing about the conditions or circumstances of it. That probably stands upon the answer of the respondent. But we will show in our evidence that there was no compensation susceptible of being charged for the use of the car, and therefore that that allegation of the article has not been sustained.

We will further show that no accounts as covering the use of this car ever came before Judge Swayne; that as a fact Judge Swayne's district was curtailed in the month of July of 1894; that the use of the California car is charged in June and July of 1893; that the use of the car from Guyencourt, Del., to Jacksonville is charged in November of 1893; and that as a fact the jurisdiction of the receivership of the Jacksonville, Tampa and Key West Railroad Company passed into the hands of the judge of the southern district of Florida and the United States district court for the southern district of Florida, and so that Judge Swayne passed from having jurisdiction or control in it until after the time when the receivership was closed and the accounts were presented to the court.

The case that was made by the learned manager as being a case of gifts within the language of Scripture we do not conceive is one that we are called upon in a court to meet, for the reason that it is not charged in the articles that Judge Swayne took these rides or used these cars as a bribe; and therefore the imputation that he was receiving gifts with a corrupt intent is entirely outside of the limits of the case as made by the articles and one that was unworthy of the managers to bring here.

I think, Mr. President, that that concludes my statement of what the counsel for the respondent hope to establish by witnesses in this cause.

THE PRESIDING OFFICER. The witnesses for the respondent will be called.

MR. THURSTON. Mr. President, I will call W. A. Blount.

WILLIAM A. BLOUNT recalled.

By Mr. THURSTON:

Q. You were sworn and testified as a witness for the managers, Mr. Blount?—**A.** Yes.

Q. You are a practicing attorney in Florida?—**A.** Yes.

Q. A member of the bar of the United States circuit and district courts?—**A.** Yes.

Q. Also of the State courts?—**A.** Yes.

Q. How long have you practiced law?—**A.** Thirty-one years last November.

Q. What has been the nature and character of your practice, especially in the circuit and district courts of the United States?—**A.** It has been in general practice, embracing all classes of practice, more especially, I should say, corporation practice.

Q. Is it or is it not a fact that you are generally, as an attorney, interested in a very large proportion of the legal business coming before the courts of the United States in your part of the country?—

A. That has been my observation, comparing my practice with the practice of the other attorneys at the bar.

Q. What public positions have you held?—A. I have been a member of the constitutional convention of Florida, city attorney of Pensacola for ten years, now State senator.

Q. You were an attorney for the defendants in the case of Florida McGuire v. certain defendants who have been named in this examination?—A. I was attorney and one of the defendants.

Q. Will you give us in a very brief and concise way the history of that litigation leading up to the time when the matter of the Belden and Davis contempt case came on?—A. It is impossible for me to give it in a brief and concise way. The litigation had been pending in various forms between the claimants to the property in controversy for more than thirty years.

Mr. Manager DE ARMOND. The witness has been asked about the general history of the litigation in the Florida McGuire case and has stated that he could not give it briefly. We think that it is an immaterial thing and object to his giving it at all.

The PRESIDING OFFICER. What is the purpose?

Mr. THURSTON. Mr. President, we agree perfectly with the managers and we thought so during all the time in which they occupied the attention of this court in digging up and retailing seriatim the history of this litigation and all the suits that preceded it.

The PRESIDING OFFICER. The Presiding Officer inquires what is the purpose of asking the witness to give a history of this litigation? How does it bear on the case?

Mr. THURSTON. One reason, Mr. President, is that they undertook to prove, little as it had any relevancy to this case, that the parties defendant in the Florida McGuire case had been put in possession of the land involved in that suit under an injunction in equity brought in a previous proceeding.

That was a part of the history of the case, and if it was important to show that, it is important for us to show to the contrary, and that is one of the things we wish to do.

If in the opinion of the court any of the testimony which they introduced covering the history of this case is relevant to this issue then we wish to meet it. Otherwise we do not, because we did not believe when they put it in and we do not believe now that it has any more reference to this case than the dictionary of the United States.

Mr. Manager DE ARMOND. Mr. President, I only wish to call the attention of the court and of counsel to the fact that the history of this case was gone into on the cross-examination of General Belden by the counsel for the respondent, and that what we asked about it was responsive to what he had drawn out. He asked for an explanation of matters that he had called upon the witness to testify about. We asked nothing in the direct examination concerning this history.

Mr. THURSTON. Only, Mr. President, to test the knowledge of the witness as to the suit. As I said before, we do not deem this testimony relevant; we did not the other.

The PRESIDING OFFICER. The Presiding Officer understands that the witness is asked by counsel for the respondent to give in as brief

and as concise a form as he can the history, the whole history, of the Florida McGuire litigation. The Presiding Officer submits the question to the Senate whether that is proper evidence in behalf of the respondent. Senators who would admit the testimony will say "aye;" opposed will say "no." [Putting the question.] In the opinion of the Chair, the noes have it. The noes have it.

Mr. THURSTON. It is very gratifying that the Senate agrees with our view of the case.

Mr. Manager PALMER. We will gratify you right along, then.

Q. (By Mr. THURSTON.) Was one Edgar, who claimed title to block 91 that has been spoken of, a defendant in the Florida McGuire case?—A. His name was embraced in the parties defendant cited in the præcipe, but he was never served and never a defendant in the case.

Q. Were you in court on the 5th day of November, 1901, at Pensacola, Fla., when Judge Swayne made a statement from the bench as to the fact that he had received a letter asking him to recuse himself from the trial of the Florida McGuire case? And if so, please state what happened on that occasion.—A. I was in court at the time that he stated he had the letter.

Q. Was that in open court?—A. That was in open court.

Q. Was the announcement made from the bench?—A. The announcement was made from the bench.

Q. Now, go on.—A. Judge Swayne stated that before coming to court he had received a letter from the counsel in the Florida McGuire case; that that letter had asked him to recuse himself because of an interest which had been acquired by him or his wife in certain property in litigation in that case. He stated that he for a relative, or his wife, had negotiated through Thomas C. Watson & Co. for the purchase of a block in the tract known as the Rivas tract, or the Chevaux tract, which was the property in controversy; that a deed had been procured by Thomas C. Watson & Co. in pursuance of that negotiation; but that when the deed was produced it was found to be a quitclaim deed and it had been returned at his direction; that he had never had any interest in the tract of land; no member of his family or relative had ever had any, and he had never been in possession or had any connection with the land, except as I have stated.

Q. Was that statement made in such a manner that it was audible and distinct to the occupants of the court room at that time?—A. Very clearly.

Q. How fully was the bar attended at that time?—A. I can not say. I think that was upon the second day of the term and not upon the opening day. Upon the first day of the term the bar attends with considerable fullness; but I can not say, as a matter of recollection, how many people were there at that time.

Q. Were there also citizens of Pensacola and visitors in attendance?—A. I can not say that as a matter of recollection. It will be simply surmise upon my part from the general attendance on the court.

Q. From your recollection can you state as to whether or not any of the attorneys for Florida McGuire were present when that statement was made by Judge Swayne from the bench?—A. Yes; Judge Paquet was present, and I think that Mr. Belden was present. He has said that he was not, and was in New Orleans, and he knows better

than I do on the subject, but I still am of the impression that he was present at the time.

Q. Do you remember as to Mr. Davis?—A. Mr. Davis? I do not.

Q. Incidentally, I call your attention away to another matter. The Judge, you say, spoke of a letter he had received asking him to recuse himself. Have you ever seen that letter?—A. I never have.

Q. Do you know what became of it?—A. Yes; Judge Paquet asked that it might be withdrawn from his hands.

Q. From the court?—A. From the Judge's hands; and it was handed over to Judge Paquet.

Q. Was that request made and the letter turned over in open court?—A. Yes.

Q. And on that same occasion?—A. Yes. Immediately after the Judge had said that the letter was not a formal request for recusation, but that he would recognize it as such and would refuse to recuse himself, the request was made by Judge Paquet and complied with.

Q. Was the case of Florida McGuire at that time on the trial docket of the court?—A. Yes. My recollection is that it had been named for trial by both sides to the litigation.

Q. During the first week of the court what steps did you take, if anything, to inform yourself as to the probability of the case being tried and as to when it might be reached upon the docket?

Mr. Manager DE ARMOND. We think it is an immaterial matter what steps he took to ascertain when the case would be for trial and what he did about it. He is not a party to the record nor a party to the proceeding that we are trying.

Mr. THURSTON. Mr. President, we propose to show that the defendants in that case prepared themselves for trial, got out their list of witnesses, were ready for trial when the case was reached, and that they had a right to demand from the judge that he should not grant any postponement of that trial unless upon legal cause shown.

Mr. Manager DE ARMOND. I suggest in regard to that matter that the persons upon the other side are the persons whose conduct should be inquired about. What the defendants in that Florida McGuire case did or what they thought certainly are not matters for which the attorneys upon the other side could be held responsible. It is not inquiring anything about the attorneys of Florida McGuire—the parties who are proceeded against for contempt—but it is inquiring about what the attorneys upon the other side did, and what the attorneys upon the other side thought, and why the attorneys upon the other side did or thought certain things.

The PRESIDING OFFICER. Does the Presiding Officer understand that that was stated in the trial of that case?

Mr. THURSTON. Yes, Mr. President. I also propose to show it for another purpose. It is part of the *res gestæ* of this proceeding that has been gone into in detail and in such a manner that we might have objected at every step, but which, in deference to the desire of this court to proceed as rapidly as possible, we did not take advantage of.

The PRESIDING OFFICER. The Presiding Officer thinks the question may be asked.

Mr. THURSTON (to the reporter). Please read the question.

The reporter read as follows:

Q. During the first week of the court, what steps did you take, if anything, to inform yourself as to the probability of the case being tried and as to when it might be reached upon the docket?

A. Under the practice adopted by Judge Swayne the first week of court is the week for the trial of criminal cases. He announced upon the opening of that term of court, as usual, that upon the completion of the trial of the criminal docket the civil docket would be called and cases taken up. In consequence of that announcement I went down every morning at the opening of court to see the district attorney in order to ascertain what would be the probable duration of the criminal business, so that I might be ready at the conclusion of that to take up the Florida McGuire case.

Q. What steps did you take, if any, to subpoena your witnesses?—

A. I had a witness—

The PRESIDING OFFICER. The Presiding Officer thought that question was asked for the purpose of showing what steps were taken by the plaintiff.

Mr. Manager PALMER. Oh, no. That was the objection, sir, that steps were taken by the defendant.

Mr. THURSTON. By this witness.

The WITNESS. What was the question?

Mr. THURSTON. What steps did you take to secure subpoenas for your witnesses?—A. I had a witness resident in Tallahassee, the surveyor-general of the United States for the State of Florida, who had in his possession the original Spanish archives that would have been used in the suit. I wrote to him to hold himself in readiness to attend upon telegraphic summons—that is not my own knowledge, however—and on Saturday, when I found that the criminal docket was about closed and that the civil docket would be called that afternoon, I telegraphed him to come and bring the documents with him, and I took out subpoenas for my witnesses, returnable on Monday morning.

Q. During that week did you have any conferences from time to time with the attorneys for Florida McGuire, or either of them, with reference to the prospect of your case coming on for trial?—A. I had conferences every day or so with Judge Paquet, in which we discussed the question as to when the trial would probably be had in this case as dependent upon the cessation of the criminal docket, and he said that he was ready for trial. I announced also to him that I was ready for trial.

Q. At those conversations was there anybody else present and apparently acting as associate counsel for Judge Paquet?—A. I can not answer that as to all of them, but in many of them Mr. E. T. Davis was present and participated in the conversation.

Q. Did you understand at those times that he was acting as an associate counsel for Judge Paquet?

Mr. Manager DE ARMOND. I object to that, Mr. President. The witness can tell what he knows, but we object to his telling what he understands, or infers, or guesses.

Mr. Manager OLMSTED. Besides, it is leading.

The PRESIDING OFFICER. The question can be put in another form—Was Davis one of counsel for the plaintiff at that time?

Q. (By Mr. THURSTON.) Did Mr. Davis, at these interviews in connection with Judge Paquet, engage with you in discussions as to the probability of the case coming on for trial?—A. He did.

Q. And is it, or is it not, a fact that he was apparently acting as an associate counsel in the case?—A. Yes.

Q. Was he in court on Saturday at about the time the criminal docket was closed?—A. He was.

Q. With whom?—A. With Judge Paquet and Mr. Simeon Belden.

Q. What took place, Mr. Blount, when the criminal docket was closed, with reference to the Florida McGuire case?—A. The judge announced that the criminal business was over and he would call the civil docket. My recollection is, though I may be mistaken in that, that the only case on the docket was the Florida McGuire case. At any rate, that case was called. Judge Paquet stated that he was not ready for trial.

Q. Now, right there, before going on, was there any suggestion made by Judge Swayne at that time that he proposed to call that case for trial before the following Monday morning?—A. None.

Q. Now, if you will, kindly go on with your statement.—A. Judge Paquet stated that he was not ready for trial. I insisted that, as I had telegraphed a witness who was then probably on his way, as my witnesses had been subpoenaed, and as we were thoroughly familiar with the issues of that case, having tried other cases embracing the same issues, there was no reason why the case should be postponed. Judge Paquet did not ask for a continuance, but he asked for a postponement until the following Monday. I strenuously resisted that. Judge Swayne stated that the custom of his court was to set cases in the future if the counsel agreed to it; but if the counsel did not agree to it, he would not postpone the case against the objection of one of them, and, therefore, he would call the case on Monday morning, when it would be tried unless the counsel for the plaintiff made a showing for a continuance.

The PRESIDING OFFICER. A continuance or further postponement?

A. For a continuance. The law of Florida requires that when a case is called on the docket it must be tried, continued, or dismissed.

Q. (By Mr. THURSTON.) My associate suggests—it slipped my attention—that you said Judge Paquet asked for a postponement until Monday?—A. Until Thursday. I thought I said Thursday.

Q. Until Thursday; I did not notice it. On that same Saturday did Judge Swayne make any further statement from the bench about the matter of block 91 and his alleged interest in it?—A. Not that I heard.

Q. Were you in court at any time during the week in which any further reference was made to that by Judge Swayne from the bench?—A. No, except on the day when the letter was presented and he refused to recuse himself.

Q. On that Saturday afternoon while you were considering the question of the forthcoming trial of the Florida McGuire case, in all that was said, was anything said by Judge Swayne about his purpose or intention of leaving town?—A. Not that I heard.

Q. Were you there at the time?—A. I was there all the time and listening intently, because I was interested in having the case tried.

Q. And you heard no statement of that kind?—A. None whatever.

Q. Were the attorneys for Florida McGuire ordered or directed by Judge Swayne to proceed to trial in that case on Saturday?—A. They were not. There was no suggestion of that kind by anybody.

Q. I assume, Mr. Blount, that some time prior to the following Monday morning you became cognizant of the bringing of a suit in the circuit court of Escambia County against Judge Swayne and the

publication of a newspaper article?—A. Yes. I can not say that between that time and Monday morning I became cognizant of the publication of the newspaper article. My recollection is that I became cognizant of that on Monday morning, but I became acquainted with the fact that Judge Swayne had been sued by Florida McGuire in the State court for Escambia County.

Q. On the opening of the court on Monday morning, November 11, what took place in the case of Florida McGuire?—A. Immediately after the opening of the court Judge Swayne called the case, and Mr. E. T. Davis arose and asked that his name be marked upon the docket as an attorney in the case, and asked leave to file a motion for a discontinuance of the case.

Q. What happened then?—A. The Judge granted the motion, and then—do you desire me to proceed further?

Q. Before I ask about the contempt proceedings I will ask you did Mr. Davis thereafter appear in any further resulting proceedings in connection with that same case of Florida McGuire in the litigation?—A. Do you mean after—

Q. After the dismissal—calling your attention to the matter of taxation of costs?—A. I do not recollect distinctly. My impression is that there was a dispute between him and me as to the costs to be taxed in that case and that he represented Florida McGuire in that taxation. That relates to the case that was discontinued.

Q. Now, going back for a moment to the Saturday afternoon when the discussion came up as to whether or not the Florida McGuire case should go on on Monday or be postponed, what part did Mr. Davis take, in connection with Mr. Paquet and Judge Belden, in connection with that?—A. Mr. Davis was sitting by Judge Paquet, and when Judge Paquet stopped every now and then he would turn to Mr. Davis and converse with him, and then make an additional statement of reasons why the case should not be tried on Monday. I did not hear what occurred between them.

Q. Is it or is it not a fact that, so far as appearance went, Judge Paquet and Mr. Davis were acting conjointly at that time as attorneys in the Florida McGuire case?

Mr. Manager DE ARMOND. I object to his judgment of appearances.

Mr. Manager PALMER. He has got a right to tell what happened; that is all.

Mr. Manager DE ARMOND. It is enough, I think, for the witness to state the facts.

Mr. THURSTON. Mr. President, I concede the objection is well taken, and it might have been interposed to a hundred questions that were asked on the other side.

Mr. Manager CLAYTON. Why did you not interpose them?

Mr. THURSTON. Well, because we had hoped all the way along that the managers would reform their method of examination.

Mr. Manager CLAYTON. You are following our bad example.

Q. (By Mr. THURSTON). Mr. Blount, what happened in court on Monday morning, November 11, as to the contempt proceedings?—A. After the case had been dismissed, I rose and suggested to Judge Swayne that by reason of facts that occurred prior thereto—some of which I have stated, and some of which I have not stated—in my opinion, a contempt had been committed of the court, and suggested to the court orally that an investigation should be instituted by him

for the purpose of determining whether such contempt had or had not been committed. Thereupon Judge Swayne reviewed the facts as they had come to him and directed that Mr. Davis, Mr. Belden, and Mr. Paquet should appear upon the following day to answer to the suggestion that I had made. The court, then, as I recollect, adjourned.

It was suggested to me by Mr. Fisher, I think, possibly by Judge Swayne—I can not recollect as to that—that it would be more formal if the suggestion was put in writing. I objected because I said that I was simply bringing the matter to the attention of the court and had no further function to perform; but, in obedience to the suggestion, I made a written motion as an *amicus curiæ* that they be cited to appear before the court. That motion, I believe, is in the record.

Q. Without going over it again, that motion resulted in a rule to show cause returnable on Tuesday morning?—A. I presume so. I do not know that I ever saw the rule until I saw it in the proceedings of the subcommittee, I believe, of the House.

Q. On the return of that rule Tuesday morning, what one of the persons named in it appeared in court?—A. Mr. Davis and Mr. Belden both appeared in court.

Q. Mr. Paquet did not?—A. He did not.

Q. You understood, of course, I presume, that he had left the city at that time?—A. It was so stated.

Q. Now, what took place with reference to the trial of that contempt proceeding?—A. Do you desire that I should go on consecutively and chronologically state what took place?

Q. Consecutively and in your own way state the facts.—A. The first thing that was done was that Mr. Davis and Mr. Belden filed what purported to be an answer to the specification contained in the motion that I had made. Judge Swayne asked if they were ready to proceed with the trial upon that answer. They said that they were. Thereupon witnesses were put upon the stand who had been subpoenaed upon behalf of the court. Mr. B. H. Burton, the deputy clerk of the Escambia County circuit court; Mr. John Denham, the proprietor and editor of the Pensacola Press; Mr. E. B. Barker, the city editor of the same paper, and Mr. Joseph C. Keyser—those, as I recollect, were the witnesses before the court. After those witnesses had been examined Mr. E. T. Davis asked that Mr. William Fisher and I should be put upon the stand in behalf of the respondents, and that was done. After the testimony was closed—

Q. Did Davis or Belden examine yourself and the other witnesses they had asked to be called?—A. Yes; they did. They asked us two questions, I think. They asked me two questions, at any rate, and Mr. Fisher, I think, one; the two questions being as to whether I was attorney for the defendants, and whether I was one of the defendants; and Mr. Fisher was asked, as I recollect, whether he was one of the defendants.

Q. Did the testimony thereupon close?—A. Yes.

Q. Did the respondents, either Davis or Belden, ask to call any other witnesses?—A. They did not.

Q. Or ask for any delay?—A. They did not.

Q. Or ask an opportunity to present anything that was not already presented?—A. They did not.

Q. Did they argue the case?—A. Judge Belden said nothing. Mr. Davis produced a copy of the American and English Encyclopedia of

Law, and cited something from it upon the subject of the jurisdiction of the United States courts in cases of contempt. There was no other argument.

Q. Was there any limitation put by the judge of the court upon the argument?—A. None.

Q. Were either of the respondents deprived by any rule or action of the court of an opportunity either to testify in their own behalf, to call witnesses, to secure process, to file pleas, to make argument, or to secure any other right they might ask for?—A. They were not.

Q. While that hearing was on, did you see a paper which purported to be a manuscript copy of the article which appeared in the Pensacola paper on Sunday morning, the 10th?—A. I did see such a paper.

Q. (Handing paper to witness.) Is that the paper?—A. (Examining paper.) I can not say. It looks like it.

Q. It appears to be it?—A. Yes.

The PRESIDING OFFICER. Is that one of the papers identified yesterday?

Mr. THURSTON. It is one of the papers identified. [To the witness.] What did you do with that paper, if anything, so far as Mr. Davis or Mr. Belden were concerned?—A. My recollection is that that paper was produced by Mr. E. B. Barker, the city editor of the Press, who said that it had been brought to him on Saturday night at about 11 o'clock by Mr. George W. Pryor, with the request that it should be published on the following morning.

Q. That was a part of his sworn testimony?—A. A part of his sworn testimony. Upon looking at the paper I handed it to Mr. Davis. He asked to see it and he said that he had nothing to do with the writing of that paper, but that he thought it was Judge Paquet's handwriting.

Q. Was that paper handed to the Judge?—A. Judge Swayne?

Q. Yes.—A. I do not recollect.

Q. Did Judge Swayne hand that paper to Mr. Davis or to Mr. Belden and ask them concerning it?—A. I think not.

Q. Did Judge Swayne on that hearing ask Mr. Davis any questions at all?—A. Not that I remember, and I do not think that he did.

Q. Did he ask Judge Belden anything at all?—A. I think not. Judge Belden sat by at the end of the table, away from the court and away from the other counsel, and really took no part in the proceedings at all.

Q. What did Judge Belden's physical appearance seem to be at that time?—A. It was about his usual appearance, except that upon one side of his face there appeared to be a distortion—that is, a drawing up of the side of the face.

Mr. THURSTON. I will not offer this manuscript in evidence at the present time, but will do so when I have further identified it by another witness.

Mr. Manager DE ARMOND. What is that—the newspaper article?

Mr. THURSTON. It is the manuscript of the newspaper article.

Mr. Manager PALMER. We may object to it when it comes along.

Q. (By Mr. THURSTON.) The suit of Florida McGuire having been dismissed, as has been testified to here, was recommenced in that same court, was it not?

A. Yes, sir.

Q. Substantially the same case and the same parties?—A. Yes.

Q. Brought on later for trial?—A. Yes.

Q. (Handing a paper to witness.) Let me call your attention to this præcipe for witnesses on behalf of the plaintiff Florida McGuire, in that later case, and to ask you to glance it over and tell me as to whether or not those witnesses, or the most of them, were witnesses on that trial.—A. (After examining paper.) Yes.

Q. On that trial were there any witnesses called by Florida McGuire or her counsel or examined on her side who did not live in Pensacola, either upon or in the immediate vicinity of the Rivas tract?—A. So far as I know, not. I have to answer that this way: That a good many of these witnesses are known to me only in a general way, and I know generally where they reside. I do not know them personally, but I think that they all reside within a mile of the court-house in Pensacola.

Q. How long, in your judgment, would it have taken the United States marshal to have subpoenaed them all as witnesses?—A. If they had all been at home at the time they could have been subpoenaed in an hour and a half or two hours.

Mr. THURSTON. We offer this original præcipe for witnesses in that case. It is the original document which was identified the other day, and we ask, for the purpose of making up the record, that the certified copy may go in instead.

Mr. Manager DE ARMOND. We ask what is the object of offering this paper? What is it for? What do counsel expect to prove by it?

Mr. THURSTON. The object is to disprove the testimony of Judge Belden, who was very clearly brought to state that the only reason they decided to discontinue the Florida McGuire case was that they needed 40 or 50 witnesses, many of them living at a distance, and that they could not possibly secure them from the time of Saturday afternoon, when court adjourned, to Monday morning, when the case was to be called.

Mr. Manager DE ARMOND. This document——

Mr. THURSTON. Wait; I am not yet through.

Mr. Manager DE ARMOND. Excuse me.

Mr. THURSTON. I have now shown that upon the reincarnation of the Florida McGuire case the same case between the same parties was tried out in full in the same court, and that on that trial they only asked on behalf of Florida McGuire for 12 witnesses by subpoena, and that they all lived, and that all the witnesses they produced lived, right there. It is in line with our insistence that here was a conspiracy against the dignity and the honor of the court by its officers; and that it is a mere subterfuge in their testimony to claim that they discontinued that case because they had a multitude of witnesses who could not be obtained, when the fact was, as we propose to show and insist, that their discontinuance of that case resulted solely and alone because they were held and taken to task for their conspiracy and for their contempt.

Mr. Manager DE ARMOND. Mr. President, the statement of the witness, Belden, was that they had forty or fifty witnesses for the trial, which was expected to take place in November, and that it would be impossible to get them for Monday, with notification upon the Saturday preceding.

This, now, is a paper which purports to be a list of some of the witnesses called for and used upon a trial which took place some time the next year in the suit brought over again—in another suit. It does not at all follow from the fact that this paper contains a list of 12 names that they did not have 40 or 50 witnesses for the trial before,

nor does it follow that the names of all the witnesses are contained upon the paper, or that they did not need or did not use any other witnesses upon the second trial. So it is an immaterial sort of paper, we think.

The PRESIDING OFFICER. The Presiding Officer thinks the paper bears on the question, although it is not conclusive.

Mr. THURSTON. You have no objection, I suppose, to our retaining the original document, to be returned?

Mr. Manager PALMER and Mr. Manager DE ARMOND. No.

The paper referred to is as follows:

In the circuit court of the United States for northern district of Florida. Florida
McGuire and Matilda Caro v. W. A. Blount et al.

To F. W. MARSH, Clerk:

You will please issue summons for the following-named witnesses for plaintiff:

Alex. Robinson, R. R. street, west side, between Government and Intd.

Chas. Ahrons, next door to Mrs. Lenar E. Romana.

Watter J. Richer, East Intendentia, near C. & L. store.

W. H. Hutchinson, East Gregory, block 2.

Dr. G. A. Brosnaham, cor. 5 & 14th st., East Hill.

Mrs. Alphonse Villoneuve, east A. V. Caro.

Thos. Powell, between Chase & Gregory, on 9th ave.

Frank Tuart, East Intendentia, S. Florida Blanca.

Carolin Lennox, near A. V. Caro, Rivas tract.

Fela Roch.

Vice Beck, near A. V. Caro, Rivas tract.

Sewell C. Cobb.

SIMEON BELDEN and E. T. DAVIS,
Attorneys for Plaintiffs.

(Indorsed: Florida McGuire v. W. A. Blount et al. Præcipe for witnesses. Filed March 14, 1902. F. W. Marsh, clerk.)

UNITED STATES OF AMERICA,
Northern District of Florida.

I, F. W. Marsh, clerk of the circuit court of the United States for the northern district of Florida, hereby certify that the foregoing is a true and correct copy of an original document and paper filed in the said suit in said court, as the same remains on file and of record in said court.

Witness my hand and the seal of said court at the city of Pensacola, in said district, this 31st day of January, A. D. 1905.

[SEAL.]

F. W. MARSH, Clerk.

Mr. MORGAN. I ask that the statement of the witness in respect to his knowledge of the residence of the witnesses in that case be read.

The PRESIDING OFFICER. The reporter who took the notes has retired to his room; he will be here in a moment.

Mr. THURSTON. Shall I go on in the meantime, before the request of the Senator from Alabama is complied with?

The PRESIDING OFFICER. Does the Senator from Alabama wish the proceedings to stop until the reporter's notes are returned to the Senate?

Mr. MORGAN. I do not care to stop the proceedings until he comes in.

Q. (By Mr. THURSTON.) That proceeding for contempt was against three persons as associate counsel in the same case, to wit, Paquet, Belden, and Davis, was it not?—A. Yes.

Q. The proceeding as to Belden and Davis came to an end, as I understand you, when they were adjudged guilty and sentenced on the 13th day of November, 1901?—A. The 12th day, I think.

The PRESIDING OFFICER. The reporter's notes are now here and the reporter will read the answer of the witness in reference to the residence of the witnesses in the second suit.

The reporter read as follows:

Q. On that trial were there any witnesses called by Florida McGuire or her counsel, or examined on her side who did not live in Pensacola, either upon or in the immediate vicinity of the Rivas tract?—A. So far as I know, not. I have to answer that this way: That a good many of these witnesses are known to me only in a general way and I know generally where they reside. I do not know them personally, but I think that they all reside within a mile of the court-house in Pensacola.

Q. (By Mr. THURSTON.) On the conclusion of the trial of Davis and Belden what sentence was pronounced?—A. Judge Swayne first pronounced a sentence condemning them to imprisonment for ten days, the payment of a fine of \$100, and disbarment from the practice of the law in his court for two years.

Q. What happened thereafter as to the change in the sentence?—A. I suggested to the judge that I thought it was beyond his power to disbar them in connection with the other punishments that he had imposed, and he thereupon modified the sentence by eliminating the disbarment feature.

Q. Was any suggestion made to him at that time by Davis and Belden, or by anyone else, that his power to punish was limited to either fine or imprisonment and could not extend to both?—A. There was not.

Q. Was that question raised at all?—A. It was not.

Q. Did you at that time, from your recollection of the statute, know that he was imposing a sentence—

Mr. Manager PALMER. We object to that.

Mr. THURSTON. We do not care to ask it except we do not want the managers to have the opportunity of insisting that it was the duty of the witness to call the attention of the court to the law as he knew it, and that he did not do it, being the prosecutor.

Mr. Manager DE ARMOND. We are not going to insist much about the discharge of duty by this witness in connection with that matter.

Mr. THURSTON. No; but this witness discharged his duty in that matter. [To the witness.] What afterwards followed, in a legal way, the sentence of Davis and Belden? A. They sued out a writ of habeas corpus before Judge Pardee.

Mr. Manager DE ARMOND. It seems to me that is taking up time on matters that are shown otherwise. The counsel is asking the witness what happened; he is going into the matter of the habeas corpus. The record shows all that.

The PRESIDING OFFICER. Evidence has been given in that respect on behalf of the managers. If there is any desire to contradict any of that testimony, the witness may be asked questions for that object. Otherwise it is scarcely desirable to go over it.

Mr. THURSTON. Mr. President, we are keenly alive to the awakened interest of the managers in the time that is being consumed in this trial; and we assure them and assure the Senate that we will endeavor to put our testimony in with the utmost rapidity and brevity.

Mr. Manager PALMER. And we will endeavor to see that you do not get in any that is not testimony.

Mr. THURSTON. I have no doubt that the board of managers will constitute a constant interrogation point as to the admissibility of evidence.

Mr. Manager PALMER. Yes, sir; whenever you try to put in anything that is not evidence.

Mr. THURSTON. It is a little singular that the board of managers should take that position at this late hour of the trial.

The PRESIDING OFFICER. This colloquy between managers and counsel does not throw very much light on the case.

Mr. THURSTON. No. I will withdraw my other question. [To the witness.] What followed in the further prosecution of this same contempt charge, if anything?

The WITNESS. You mean in the legal proceedings?

Mr. THURSTON. Legal proceedings.

The WITNESS. After the habeas corpus?

Q. Of the original contempt charge. I ask you now directly as to the other defendant in it, Mr. Paquet.

Mr. Manager DE ARMOND. As to that, we object. What happened to Paquet or did not has nothing to do with this case.

The PRESIDING OFFICER. The Presiding Officer supposes that the object is to prove that Judge Paquet came in and purged himself.

Mr. THURSTON. That is the proposition.

The PRESIDING OFFICER. The Presiding Officer thinks the question may be asked.

Mr. THURSTON (to the reporter). Read the question.

The reporter read as follows:

Q. Of the original contempt charge. I ask you now directly as to the other defendant in it, Mr. Paquet.

A. Judge Paquet first appeared in answer to the citation with counsel, and objected to the proceeding upon the ground that Judge Swayne did not have jurisdiction, as the transaction in which counsel were engaged was not an official transaction of an officer of the court. Judge Swayne overruled that contention, and Judge Paquet asked for time in which to make an answer. Thereupon he sued out a writ of prohibition from the circuit court of appeals, which was heard before that court and denied, and then he appeared in the circuit court before Judge Swayne and filed a paper, which was an apology and a purging of the contempt, as I understood, though the paper speaks for itself.

Q. (By Mr. THURSTON.) What followed that?—A. Thereupon he was discharged without punishment.

Mr. THURSTON. We offer in evidence a certified transcript of that portion of the record in the case, merely asking to have read the paper in which Judge Paquet confessed and purged himself of contempt.

Mr. Manager PALMER. Where did that come from?

Mr. THURSTON. That came out of the minority report of the committee in the House.

Mr. Manager PALMER. It never has been offered in evidence, and we object to it.

Mr. HIGGINS. It is offered in evidence now.

Mr. Manager PALMER. We object to that paper. It has never appeared in evidence in this case. The original has never been seen, and whether any such paper exists we do not know. We object to this extract from the minority report because it was never in the case.

Mr. THURSTON. This is certified to by the clerk of the court as being a part of the record, and I think, if you will permit me, I have in my pocket the stipulation with the managers that certified copies of records may be produced and used in evidence in the same manner that the original documents could be.

Mr. Manager PALMER. Yes. This purports to be a certified copy of a paper which is contained in the minority report of the Judiciary Committee.

Mr. THURSTON. Oh, no.

Mr. Manager PALMER. The first place where that paper ever appeared is in the minority report. It has never been seen by anybody except perhaps the people who made the minority report. I say it was never offered in evidence in any place. I should like to see the original, if you have it.

Mr. THURSTON. It is on file in the court. The clerk certifies under the seal of the court that—

The foregoing is a true and correct copy of an original paper or document filed in the cause therein specified in said court on the day therein set forth, as the same remains of record and on file in said court.

To remove any difficulty—

The PRESIDING OFFICER. The Presiding Officer thinks an official copy of the proceedings in court is proper evidence; and as to the other question, whether this is evidence or not, three parties were proceeded against for contempt. It was one proceeding. The action of the court with regard to two of them has been introduced in evidence, and the Presiding Officer thinks that the action of the court in regard to the third of the persons complained of for contempt can properly be admitted.

Mr. THURSTON. I will ask the Secretary to read all but the certificate of the clerk.

Mr. CULBERSON. I desire to inquire through the Chair if this paper is not a copy of the certificate of the clerk and not the certificate of the clerk itself?

The PRESIDING OFFICER. The Presiding Officer understood that it was an official copy of the court's proceedings, attested by the clerk.

Mr. THURSTON. It is under the hand of the clerk and the seal of the court. It is the original certificate.

The PRESIDING OFFICER. What the Secretary is now about to read and which will go into the record is an official copy of the proceedings of the court.

Mr. THURSTON. Yes. Perhaps before that goes in and to avoid any further question over these matters, as they may arise hereafter—

Mr. Manager PALMER. I am not objecting to this paper on account of its being a certified copy. The objection I made was that the original paper first appeared, if it appeared at all, in the minority report. The original paper never has been seen. If this clerk wants to certify that this paper which appears in the minority report is a part of his record, I am not going to object. That is what he is certifying. He is certifying that the minority report is an original record of his court. Perhaps the minority report was made from the original record. I do not know. I have never seen the original of this document. It has never been introduced in evidence.

Mr. THURSTON. The clerk has pasted onto this paper a printed copy of the original paper in his court, and he certifies that it is a true copy.

He certifies it under the hand of the clerk and the seal of the court. The original paper is there on file now, as certified to.

Mr. Manager PALMER. Well, I doubt it.

Mr. SPOONER. Mr. President, may I submit a question to the witness at the present time?

The PRESIDING OFFICER. The Senator from Wisconsin asks to submit a question to the witness at this time. If there is no objection the question will be read.

The Secretary read as follows:

Q. What action was taken by the court on the rule against L. P. Paquet for contempt after the filing of his answer on March 31, 1902?

A. I do not recognize the date. If that was the final answer the action taken by the court was to discharge him without punishment.

Mr. McCOMAS. Mr. President, I could not hear the answer.

The WITNESS. I will repeat it as closely as I can. I said that I did not recognize the date as quoted in the inquiry, but that if refers to the final answer filed by Mr. Paquet the judge discharged him upon that answer without punishment.

Mr. THURSTON. I have offered—

The PRESIDING OFFICER. The Presiding Officer thinks the paper is admissible.

Mr. THURSTON. I offer the pleading and also the certified copy of the judgment which followed it.

The Secretary read as follows:

United States circuit court, northern district of Florida, at Pensacola—In the matter of contempt proceedings against Louis P. Paquet.

Now comes Louis P. Paquet, respondent in the above-entitled matter, and says:

That upon full and mature consideration of his actions and conduct in the matter referred to in the motion, made as the basis of the above-entitled proceedings, through excessive zeal in behalf of his clients, he did so act that this honorable court was justified in believing that the said actions were committed in contempt thereof and as showing disrespect therefor. That respondent regrets exceedingly the course taken by him in this matter, and now appears in court and requests that he be permitted to apologize for his behavior and file with the records in the above-entitled cause this paper.

LOUIS P. PAQUET, *Respondent*.

Filed March 31, 1902.

F. W. MARSH, *Clerk*.

In the United States circuit court, northern district of Florida. The United States v. Louis P. Paquet.

This cause coming on to be heard, on the application of Louis P. Paquet to withdraw his answer in the above-entitled cause, and the submission of his explanation and apology by the said defendant;

It is now ordered that the said defendant do have leave to withdraw his answer heretofore filed and to subtract the same from the files of this court, and that this court do accept the said apology and statement filed on March 31, 1902, and the said defendant is hereby discharged from the rule to show cause, heretofore granted against him.

Done this April 1, A. D. 1902.

CHAS. SWAYNE, *Judge*.

(Indorsements: United States v. Louis P. Paquet. Order. Filed April 2, 1902. F. W. Marsh, clerk.)

UNITED STATES OF AMERICA, *Northern District of Florida*:

I, F. W. Marsh, clerk of the district court of the United States for the northern district of Florida, hereby certify that the foregoing is a true and correct copy of an

original paper or document filed in the cause therein specified in said court on the day therein set forth, as the same remains of record and on file in said court.

Witness my hand and the seal of said court at the city of Pensacola, in said district, this 3d day of February, A. D. 1905.

[SEAL.]

F. W. MARSH, Clerk.

Mr. THURSTON. That is all we care to ask the witness.

Cross-examined by Mr. Manager DE ARMOND:

Q. When do you say your attention was first called to the bringing of the suit against Charles Swayne in the State court?—A. I have not said. I say now it was called to my attention on Sunday, the 10th of November.

Q. When was your attention first called to the newspaper article about which you have testified?—A. My recollection is that my attention was first called to it by Mr. William Fisher on Monday morning, possibly Sunday afternoon.

Q. Who called your attention to the bringing of the suit?—A. Judge Swayne by telephone on Sunday morning.

Q. Did the Judge say anything about the article in the newspaper?—A. I do not recollect whether he did or not. If he did I did not see the article—I did not take the paper—until the next day.

Q. Did you not testify when you were before the committee that the Judge called your attention to the article and that you would look it up?—A. I do not think so. The testimony will show, however. If you will present it to me, I will tell you whether I said it or not.

Q. What further conversation did you have with Judge Swayne about the matter?

The WITNESS. On that day?

Mr. DE ARMOND. That day or any other day.

A. On that day he ask me if I had known that he had been sued. I told him I had not. My recollection is that he asked me what I thought about it. I said it savored to me of contempt, but that I could not say until I had investigated the facts and circumstances. Then the conversation ceased.

Q. Did you have any talk with him Monday about the matter?—A. Scarcely a talk. I saw Mr. Fisher—

Q. I was asking about Judge Swayne, not Mr. Fisher.—A. I will lead up to it. I saw Mr. Fisher, and he looked up the witnesses in connection with the proceeding—

Q. I prefer that you would answer my question. I asked you whether you had any talk with Judge Swayne on Monday about this matter?—A. I announced to Judge Swayne, in passing into the court room on Monday, that I had seen Mr. Fisher and investigated the circumstances, and that I was going to make a suggestion to the court to have these gentlemen cited for contempt. I was simply laying the predicate for that by saying what I got from Mr. Fisher.

Q. Was that before court was called?—A. Just before court. I passed from his office into the court room.

Q. Then after the dismissal of the cause—you first made a verbal suggestion?—A. Yes.

Q. When did you file the suggestion in writing?—A. It was probably an hour afterwards; I think just after the adjournment of the court.

Q. Just after the adjournment of the court?—A. I think so. I did not file it in writing. I sat down at the desk and wrote it on the motion book.

Q. You were present, you have said, when the testimony was taken in the case?—A. I was.

Q. You have given the names of the witnesses who testified?—A. Yes.

Q. Was not the testimony of the newspaper men confined entirely to the question of this publication?—A. That is my recollection.

Q. Was not the testimony of the deputy clerk confined entirely to the filing of papers and the issuing of process in the suit against Judge Swayne in the State court?—A. Not entirely to the filing. He testified in addition to that that Mr. Joseph C. Keyser, who testified he was an interested party, had come to him with a præcipe after his office had closed, and had got him at his house, and requested that process should be issued that night and served at all hazards before Monday morning.

Q. Mr. Keyser testified also?—A. Mr. Keyser testified; yes.

Q. In regard to the same matter?—A. Yes.

Q. That was all the testimony in the case, except the testimony of yourself and Mr. Fisher, to the effect that you were defendants and attorneys of the defendants?—A. Yes, so far as I recollect, and I think my recollection is accurate.

Q. How soon after the conclusion of Judge Swayne's sentence were these defendants removed from the court room?—A. I do not know. I went out immediately.

Q. Who had the witnesses subpoenaed in the contempt proceedings? You say the witnesses of the court.—A. Either Mr. Fisher or I. I do not remember which.

Q. You do not recollect which?—A. No; we were both acting together in the matter.

Q. Did not Judge Swayne usually leave town right after the adjournment of the court?—A. Yes; he did.

Q. Did he not usually remain away until court assembled again?—A. Yes; he did.

Q. The Florida McGuire case was not set down for any particular day, was it?—A. No; except on the Saturday night it was set down for call on Monday. Previous to that time it had not been set down.

Q. Do you recollect how many witnesses were used in the trial of the Florida McGuire case on the part of the plaintiff?—A. You mean the subsequent trial?

Q. Yes.—A. Sixteen, I think.

Q. Not more than that, you think?—A. I think not. I have that case now before the Supreme Court of the United States, and I know it quite thoroughly. My recollection is that there were sixteen.

Mr. Manager DE ARMOND. I believe that is all.

By Mr. THURSTON:

Q. Just one question. Do you know how long Judge Swayne remained in court after the November term, 1901, in Pensacola?—A. No, I do not. He was there several days, but I have nothing fixed in my memory as to how long he remained.

Q. He was there several days after the term closed, but you can not testify distinctly?—A. No, sir.

Mr. THURSTON. That is all, Mr. President.

Mr. CULBERSON. Mr. President, I wish to propound a question to the witness.

The PRESIDING OFFICER. The Senator from Texas propounds the following question to the witness. It will be read by the Secretary.

The Secretary read as follows:

Q. What was said by Judge Swayne in rendering judgment in the contempt proceedings?

A. That will take some little time to give it. Of course, it has been three or four years, and I can simply give the ideas without his language.

He first took up the answer of Mr. Davis and Mr. Belden and adverted to that part of it which said that the court was without jurisdiction because the suing in the State court was not an act done in the United States court, and therefore it was not an official transaction. He said with reference to that that it made no difference where the suit was brought, that they were officers of the court. It had been shown that they were attorneys in the case of Florida McGuire, which was pending in that court, and that no matter what instrumentality they may have chosen to effect a purpose with respect to the Florida McGuire suit, it was an official transaction in that suit. He elaborated that—but it is unnecessary for me, I think, to go on further.

Then he took up the question raised by Mr. Davis, separate from Mr. Belden; that Davis was not an attorney of record in the Florida McGuire case, and he said that Mr. Davis had appeared before him during the week and on Saturday night—I mean before him in his presence—and it was apparent that he was connected with that suit; and in view of the evasive character of his answer and in view of the fact that he had not, upon oath or otherwise, denied that he was connected with that suit, it must be assumed to be true that he was an attorney in the Florida McGuire suit.

Then he commented upon the evasive character of the answer, so far as it related to the interest of Judge Swayne in the subject-matter in litigation, and said it stated things which were not correct and which were known to the counsel, Messrs. Davis and Belden, not to be correct, because he had stated to the contrary in the previous week; that they had not denied that the land in controversy was open and in the possession of no one; they had not denied that they knew that fact; and they had sued him for being in possession and sued him for mesne profits when they knew that there had been no mesne profits; and that that fact, taken in connection with the fact that they had known by the same information, which they had on Saturday night for at least a week, and with the further fact that the suit which they then brought could be brought just as effectively thirty or forty days thereafter, and in connection with the further fact that they had done this on Saturday night after he had announced that he would try that case on Monday, was proof conclusive, to his mind, that there could be but one purpose in it, and that was to cause him to recuse himself in order that they might not have to try the case.

He then said that their action was unbecoming the attorneys of any court; that it indicated that they were either ignorant or vicious, and to his mind the action which they had taken showed that it was vicious, and, upon that assumption, that their actions were a stench in the nostrils of the people.

He said that Mr. Belden was an old man and apparently in affliction, and that the passage of sentence upon him was one of the saddest things that he had had to do in his judicial career, but that the sympathy which he held for him could not in any wise deter him from performing the duty which was incumbent upon him as a judge; and he therefore was compelled to place him in the same category with Mr. Davis, who was a younger and hardier man.

That, of course, is a very brief synopsis. The Judge took fifteen or twenty minutes in pronouncing the sentence in that way.

Mr. CULBERSON. Mr. President, I have a further question to propound.

The PRESIDING OFFICER. The Senator from Texas asks another question, which will be read by the Secretary.

The Secretary read as follows:

Q. What was the manner of Judge Swayne as to anger or resentment in imposing sentence in the contempt proceedings?

A. That depends entirely upon the view point of the man who was listening to him. I believed that he was right. It seemed to me—

Mr. Manager DE ARMOND. Mr. President, I object to that. It is not an answer to the question. The witness is giving an opinion now, and that was distinctly ruled out before, and he knows it.

The WITNESS. I object, if the court will permit me, to any statement of that kind which the witness will have no opportunity to answer.

Mr. Manager DE ARMOND. There was an objection made distinctly to the witness giving his opinion, and it was ruled to be improper for him to give his opinion. The witness heard it, and he is an intelligent witness. Now, he is not answering the question that was put to him. He was asked as to whether the Judge showed anger or not. He said it depended upon the view point, and then he proceeded to tell what he thought about it, and whether it ought to be regarded as anger by a person feeling and thinking as he thought and felt. I say it is not responsive to the question, and it is contrary to the ruling of the court heretofore.

The PRESIDING OFFICER. The witness may state how he regarded the appearance of the Judge in imposing this sentence.

Mr. CULBERSON. Mr. President, I ask that the question be read again, so that the witness can answer the question propounded.

The PRESIDING OFFICER. The Presiding Officer was about to say that he did not think the witness should make any comment in answering any question as to whether he thought the Judge was right or not. The question will be again read.

The Secretary read as follows:

Q. What was the manner of Judge Swayne as to anger or resentment in imposing sentence in the contempt proceedings?

A. I clearly have to give my opinion upon that point. My opinion was that his manner was emphatic, but not unduly severe, considering the fact that he had found the defendants guilty. I can simply say that that was my opinion. Other persons viewing it from another standpoint might have thought otherwise.

Mr. MORGAN. I have a question which I should like to put to the witness.

The PRESIDING OFFICER. The Senator from Alabama propounds the following question.

The Secretary read as follows:

Q. When the Florida McGuire case was pending in the United States court, and at the time of its discontinuance, did you claim title to or the right of possession in any land included in that suit?

A. Oh, yes; I was one of the defendants, and quite largely interested in the suit, and was an attorney.

Mr. McLAURIN. I desire to propound a question.

The PRESIDING OFFICER. The Senator from Mississippi propounds a question in writing, which will be read.

The Secretary read as follows:

Q. How long after the convening of court on Monday morning until you made the motion for a rule for contempt?

A. Probably ten minutes after Mr. Davis had asked that his name be docketed and had made a motion for a discontinuance.

Mr. CULBERSON. Mr. President, one other question.

Mr. McLAURIN. The answer to the question I propounded I do not think fully answers the question. I should like to have it put again.

The PRESIDING OFFICER. The last question will be read again.

The Secretary read as follows:

Q. How long after the convening of court on Monday morning until you made the motion for a rule for contempt?

A. I answered that; about ten minutes.

The PRESIDING OFFICER. The question propounded by the Senator from Texas [Mr. Culberson] will be read.

The Secretary read as follows:

Q. Did the Judge reside in Pensacola, Fla., or in his district prior to 1900?

A. That would require me to answer as to what residence is, and I am not prepared to do that. It is a legal question which involves a great many considerations of law and fact. If the Senator will ask specific questions as to specific facts I will be glad to answer them.

Mr. MALLORY. Mr. President, I propound a question to the witness.

The PRESIDING OFFICER. The Senator from Florida propounds the following question, which will be read.

The Secretary read as follows:

Q. At what time of the week was it that you say that Davis took part in consultation with the other attorneys for the plaintiff in the Florida McGuire case?

A. Off and on every day during the week preceding the Saturday night of November 9. I can not say every day, but off and on during that week.

The PRESIDING OFFICER. Does the Presiding Officer understand the witness to say "the same week?"

The WITNESS. The same week.

Reexamined by Mr. THURSTON:

Q. Mr. President, just on one matter I neglected to examine the witness. First, I will ask you, you are a practitioner also in the State courts of Florida?—A. Yes.

Q. Will you tell me what the rules are with reference to appearance day and rule days in the circuit court in and for Escambia County?—

A. Process must be issued out of the court ten days before the return

day, the return being rule day, that being the first Monday of the next succeeding month, and must be served on or before the tenth day preceding that rule day; so that process must be issued on the second Thursday before the first Monday of the month and served on or before the second Friday before the first Monday of the month.

Q. After November 9, 1901, what was the next term of the circuit court of Escambia County?—A. On the second Monday of April, 1902.

Q. How late could a suit have been begun to have been at issue at that next term of the court?—A. Under the rules a suit could have been brought returnable to the rule day in February. The plea day would have fallen on the rule day in March, and then also under the rules the case would have been at issue—would have to be at issue—by the next term of the court.

Mr. THURSTON. That is all, Mr. Blount.

Mr. BACON. Mr. President, I desire to propound a question to the witness.

The PRESIDING OFFICER. The Senator from Georgia propounds the following question, which will be read.

The Secretary read as follows:

Q. Did you know prior to the convening of the court on Monday morning that it was the intention of the counsel for Florida McGuire to discontinue the case?

A. I did not.

Reexamined by Mr. Manager DE ARMOND:

Q. I understood you to say that Mr. Davis had been counseling with the other attorneys about this case every day of that week?—A. No; I did not say every day.

Q. I understood you to say so.—A. I said off and on during the week.

Q. Now, do you know of any counsel with those attorneys at all about that case?—A. I do.

Q. How do you know it?—A. Because it was done in my presence.

Q. Done in your hearing?—A. Yes, sir. I was talking with Judge Paquet, and Mr. Davis was standing by and talking to him with reference to the probable time that that case would be tried.

Q. Now, you call that counseling with Judge Paquet, do you?—A. Well, that is a fact.

Q. Do you call that counsel between Mr. Davis— A. I do.

Q. And Judge Paquet?—A. I do.

Q. You asked Paquet about when the case would be tried? You and Paquet were talking about it?—A. Yes, sir.

Q. And Mr. Davis was standing there?—A. Not only standing there, but he and Judge Paquet were talking about whether it would be ready for trial.

Q. Just state what they said?—A. I can not state it any more distinctly than that they were talking about when that case would come off for trial.

Q. Let me ask you whether you have any knowledge at all about Mr. Davis being in that case until he appeared to have the case dismissed?—A. I have no knowledge except what I have said, that he was with Judge Paquet, talking with Judge Paquet about the case—

Q. Now, what did he say?

Mr. HIGGINS. Let him answer.

Mr. Manager DE ARMOND. Very well.

The WITNESS. He said just what I have said.

Q. (By Mr. Manager De ARMOND.) Just what did he say?—A. I can not tell you.

Q. What did Judge Paquet say?—A. Judge Paquet was asking as to when the case would be tried.

Q. Asking whom?—A. Asking me. I was talking with the district attorney—

Q. Go on; proceed.—A. Just a moment, please; let me finish my answer, and then I will answer your question. I was talking to the district attorney and saw him usually every morning, and then Judge Paquet and I would talk over the question as to whether that case would be tried that week or not, and Mr. Davis was present and joining in the conversation.

Q. What did Davis say?—A. I do not remember.

Q. What did you say to Davis?—A. I did not say anything to Davis.

Q. What did Paquet say to Davis?—A. I do not know.

Q. Now, then, you can not tell a single thing that passed between Davis and Paquet in the way of consultation, but who, you say, consulted frequently?—A. I say so very decidedly.

Q. What was the consultation about?—A. They consulted about the question of getting ready for the case when it would be called toward the end of that week.

Q. They consulted in your presence about getting ready for the case upon trial?—A. Yes, sir.

Q. That happened frequently?—A. It happened three or four times; yes; off and on during the week.

Q. Why did it become necessary for you to consult Judge Paquet about the time of the trial?—A. Why did it become necessary for me to consult with Judge Paquet?

Q. Why did you do it?—A. Because I always do that—consult with counsel on the other side when the time of trying the case is uncertain. I talk to them as to when it will probably be tried.

Q. You said, I believe, there had been no day fixed for the trial of that case until that Saturday evening?—A. None.

Q. None of you knew when it would come to trial?—A. None, except approximately.

Q. Approximately?—A. The district attorney had said that probably they would close the criminal business the latter part of that week.

Q. Is there anything unreasonable in asking that the case be set down for trial for a particular day?—A. I thought so; yes, if you want my opinion.

Q. Why did you think so?—A. Because I had tried practically the same issue half a dozen times with the same litigants, and they had tried to continue the case at nearly every term. The constant policy had been to postpone the cases and not to try them; I was ready; there was nothing else to do in the case, and I desired to try it.

Q. This was not a question of continuance. It was a question of postponement.—A. I understand that, but I had my witnesses subpoenaed. I had a witness coming from Tallahassee, an official of the court, for the purpose of attending upon the trial.

Q. Did you talk with Judge Swayne anything about when you probably could take up that case?—A. I did not that I recollect.

Q. Are you sure you did not?—A. No; I would not say. I frequently talk to the judges of the court as to when the criminal docket will be over and we can take up the civil docket.

Q. Was there any suggestion to you by Judge Swayne as to when he would probably take up that case?—A. I can not answer that; very possibly there was. As I said, I usually do it, for I want to have my witnesses in attendance when the criminal docket is closed.

Q. Did you know anything about whether witnesses had been subpoenaed upon the other side?—A. I did not.

Q. And yet you consulted with Judge Paquet frequently to find out whether or not he was ready for trial?—A. I can say again I did not consult with Judge Paquet. I talked with him just as I would talk to any attorney.

Q. You conferred with him—to use your own verb?—A. Yes.

Q. Frequently; and did not learn anything about whether his witnesses had been summoned?—A. I did not, except that he would be ready for trial.

Q. Did you not know as a matter of fact that he was not making preparation for trial until the case was set down; that is, in the way of summoning witnesses?—A. I did not. I did not know until the afternoon of Saturday that there would be any objection whatever on his part to try that case the day after the criminal docket was concluded.

Q. You live in Pensacola?—A. I do.

Q. Was there any particular reason of convenience or anything else why that case should have been tried, as far as you were concerned, on Thursday?—A. None, except that I am quite busy, and when I am ready and my witnesses ready I want to try the case.

Q. Was it not an effort to crowd the plaintiffs into trial when not prepared for trial, instead of giving them a reasonable time to get prepared?—A. Not in the slightest. I was not afraid of that in the least.

Q. Did you object to the discontinuance of the case when Mr. Davis appeared for that purpose?—A. I could not, as a matter of course.

Q. You were anxious, however, to have the ejectment suit tried, even though the plaintiffs were discontinuing? You and your clients claimed title, and you were in constructive possession, were you not, or claimed to be?—A. As to a part of it we were in actual possession; as to the rest probably in constructive possession.

Q. Do you say that you were anxious to have a case of ejectment tried when you were in possession?—A. Well, yes.

Q. And you were opposed to a discontinuance of it?—A. I did not say I was opposed to a discontinuance.

Q. You said you could not prevent the discontinuance.—A. Precisely.

Q. Did you mean by that to imply that you would like to have prevented it, or that you would not?—A. That is a mental operation I do not remember I went through with. It was, as a matter of course, a discontinuance.

Q. Were you opposed to a discontinuance of it?—A. I think, looking back at this time, that I would have preferred to have tried it and have done with it just exactly like we have done with all the rest. We have won all the rest and I expected to win that.

Q. You do not recollect, though, what your feeling was at that time, or what your belief was at that time about it?—A. I do not. Under our practice, a man could have filed an order to discontinue without application to the judge; it was a matter we had nothing to do with.

Q. Then, if you do not know whether you had any opposition to a discontinuance of it you hardly know whether you were very anxious for the trial, do you?—A. That is a non sequitur I do not see.

Mr. THURSTON. Mr. President, I object to this line of questions.

Mr. Manager DE ARMOND. Very well; I am through.

Mr. THURSTON. Running into such a channel is entirely immaterial.

Mr. Manager DE ARMOND. Yes; I would not like to run into any channel not entirely satisfactory to the counsel on the other side, and I have no further questions.

Mr. FAIRBANKS. Mr. President, I move that the Senate sitting in the trial of the impeachment case adjourn until to-morrow at 2 o'clock.

The motion was agreed to; and (at 5 o'clock and 5 minutes p. m.) the Senate sitting as a court adjourned until to-morrow, Wednesday, February 22, at 2 p. m.

The managers on the part of the House of Representatives, the respondent, and the counsel for the respondent retired from the Chamber.

IN THE SENATE, *February 22, 1905.*

The PRESIDENT pro tempore. The hour of 2 o'clock has arrived, to which the Senate sitting as a court of impeachment adjourned. The Senator from Connecticut will please take the chair.

Mr. PLATT, of Connecticut, assumed the chair.

The PRESIDING OFFICER (Mr. Platt, of Connecticut). The Senate is now sitting in the trial of the impeachment of Charles Swayne, United States judge in and for the northern district of Florida. The Sergeant-at-Arms will make proclamation.

The Sergeant-at-Arms made the usual proclamation.

The PRESIDING OFFICER. The Sergeant-at-Arms will ascertain whether the managers on the part of the House are in attendance.

The managers on the part of the House of Representatives appeared, and were conducted to the seats assigned them.

The PRESIDING OFFICER. The Sergeant-at-Arms will ascertain whether the respondent and his counsel are in attendance.

Judge Charles Swayne, accompanied by Mr. Higgins and Mr. Thurston, his counsel, entered the Chamber and took the seats assigned them.

The PRESIDING OFFICER. The Journal of the proceedings of the last trial day will be read.

The Secretary read the Journal of the Senate sitting for the trial of impeachment of Charles Swayne Tuesday, February 21.

The PRESIDING OFFICER. The Presiding Officer is informed that a witness has been discharged both by the managers and by counsel whom some Senators desire to have recalled—Mr. Blount. If there be no objection, the Sergeant-at-Arms will telegraph for him and endeavor to intercept him and have him come back.

Mr. THURSTON. Mr. President, the respondent has at all times insisted, and still does insist, upon the pleas to the jurisdiction as to

the first seven counts. It had been the purpose of my associate, Mr. Higgins, to present our statement and arguments with respect to those pleas as a part of his opening statement. In deference to the evident wish of the Senate and to the imperative demand for the completion of the legislative duties of the Senate, he decided to waive that privilege.

We have prepared a statement and argument as to those pleas to the jurisdiction which we could, of course, use on the final arguments in the case. But we feel it would be fairer to the Senate and to the managers to present those now, and as our position upon the pleas to the jurisdiction and as a part of our presentation of the case we now ask to present our statement and argument and have it printed in the record, so that the Senate and the managers may have an opportunity before the close of the case to consider it. [To the managers on the part of the House.] Is there any objection?

Mr. Manager PALMER. We do not object.

Mr. THURSTON. We present it and ask that it go in as a part of the record without taking the time to read it.

The PRESIDING OFFICER. The brief prepared by counsel on the question of jurisdiction as to the first seven articles will be inserted in the record unless there be objection on the part of the managers or of Senators.

Mr. THURSTON. Mr. President, I feel it is our duty to state that this presentation of the historical, constitutional, and parliamentary procedure in impeachment proceedings has been prepared not by counsel for respondent, whose names are attached to it, but by a gentleman who is renowned as a scholar along constitutional lines and a lawyer of great ability, and without naming him we wish to disclaim any credit that may attach to the preparation of this document.

Mr. Manager PALMER. I should like to understand exactly what this document, which is very formidable in character and nature, purports to be. There are some forty-eight pages. We now have a couple of copies of it. It is the first time we have seen a copy of it. I should like to ask counsel what it amounts to?

Mr. THURSTON. It is the argument in support of our pleas.

Mr. Manager PALMER. Are you demurring to the first seven articles of impeachment upon the ground that they do not charge an impeachable offense? Is that the idea?

Mr. THURSTON. Our pleas are in to that effect, if the manager has read them.

Mr. Manager PALMER. Exactly. I understand you are filing a demurrer to the first seven articles on the ground that they do not charge impeachable offenses.

Mr. THURSTON. We did interpose special pleas to those articles.

Mr. Manager PALMER. And this argument is intended to support those pleas?

Mr. THURSTON. Yes, sir.

Mr. Manager PALMER. Of course your demurrer admits the truth of all that is stated in those articles.

Mr. THURSTON. I beg pardon.

Mr. Manager PALMER. It could not be a demurrer if it did not.

Mr. THURSTON. I beg pardon, Mr. President. We have not demurred. Our pleas stand, and the manager can take any legal view of them that he chooses to present.

Mr. Manager PALMER. All right; I simply want to understand what you are driving at.

The argument referred to is as follows:

In the Senate of the United States sitting as a court of impeachment. The United States of America against Charles Swayne, a judge of the United States, in and for the northern district of Florida. Upon articles of impeachment presented by the House of Representatives.

Argument in support of the pleas to the jurisdiction interposed in behalf of the respondent to articles 1, 2, 3, 4, 5, 6, and 7, such pleas presenting the contention that the facts set forth in said articles, even if true, do not constitute impeachable high crimes and misdemeanors as defined in the Constitution of the United States.

I. WHAT ARE IMPEACHABLE "HIGH CRIMES AND MISDEMEANORS," AS DEFINED IN ARTICLE II, SECTION 4, OF THE CONSTITUTION OF THE UNITED STATES?

By a strange coincidence, the death of parliamentary impeachment, as a living and working organ of the English constitution, synchronizes with its birth in American constitutions, State and Federal. Leaving out of view the comparatively unimportant impeachment of Lord Melville (1805), really the last of that long series of accusations by the Commons and trials by the Lords, which began in the fiftieth year of the reign of Edward III (1376), was the case of Warren Hastings, who was impeached in the very year in which the Federal Convention of 1787 met at Philadelphia.

Before that famous prosecution, with its failure and disappointment, drew to a close, the English people resolved that the ancient and cumbersome machinery of parliamentary impeachment was no longer adapted to the wants of a modern and progressive society. But before this ancient method of trial thus passed into desuetude in the land of its birth it was embodied, in a modified form, first, in the several State constitutions and finally in the Constitution of the United States.

Article II, section 4, of the Federal Constitution provides that "the President, Vice-President, and all civil officers of the United States shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors." Article I, section 2, provides that "the House of Representatives shall choose their Speaker and other officers and shall have the sole power of impeachment." Article I, section 3, provides that "the Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation.

When the President of the United States is tried the Chief Justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present. Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law." Article III, section 2, provides that "the trial of all crimes, except in cases of impeachment, shall be by jury."

II. PROVISIONS BORROWED FROM THE ENGLISH CONSTITUTION.

Mr. Bayard said in his argument in Blount's trial (Wharton's St. Tr., 264): "On this subject, the convention proceeded in the same manner it is manifest they did in many other cases. They considered the object of their legislation as a known thing, having a previous definite existence. Thus existing, their work was solely to mould it into a suitable shape. They have given it to us, not as a thing of their creation, *but merely of their modification*. And therefore I shall insist that it remains as at common law, with the variance only of the positive provisions of the constitution. * * * That law was familiar to all those who framed the constitution. Its institutions furnished the principles of jurisprudence in most of the States. *It was the only common language intelligible to the members of the convention.*"

A recent writer of note, speaking on the same subject, has said: "If we examine the clauses of the Constitution, we perceive at once that the phraseology is applied to a method of procedure already existing. 'Impeachment' is not defined, but is used precisely as 'felony,' 'larceny,' 'burglary,' 'grand jury,' 'real actions,' or any other legal term, used so long as to have acquired an accepted meaning, might be. The Constitution takes impeachment as an established procedure, and lodges the jurisdiction in a particular court, declaring how and by whom the process shall be put in motion, and how far it shall be carried. They have given to us a thing not of their creation, but of their modification.

"To ascertain, then, what this established procedure was, what were, at the time of the constitutional convention, impeachable offenses, we must look to England, where the legal notions contained in the clauses quoted had their origin." (American Law Review, vol. 16, p. 800. Article by G. Willett Van Nest.) Madison, in No. 65 of the Federalist, said: "The model from which the idea of this institution has been borrowed pointed out the course to the convention. In Great Britain it is the province of the House of Commons to prefer the impeachment and of the House of Lords to decide upon it. Several of the State constitutions have followed the example."

III. HIGH CRIMES AND MISDEMEANORS AS DEFINED IN ENGLISH PARLIAMENTARY LAW.

The English Parliament as a whole has always been considered and styled "The high court of Parliament," which is governed by a single body of law peculiarly its own. As Sir Thomas Erskine May (Parl. Prac., pp. 71 and 72) has well expressed it: "Each house, as a constituent part of Parliament, exercises its own privileges independently of the other. They are enjoyed, however, not by a separate right peculiar to each, but solely by virtue of the law and custom of Parliament." In the words of Lord Coke (4 Inst., 15):

"As every court of justice hath laws and customs for its direction—some the civil and canon, some the common law, others their own peculiar laws and customs—so the high court of Parliament hath also its own peculiar law, called the *lex et consuetudo parliamenti*." Blackstone (Bk. I, 163) in commenting upon the statement of Coke, that the law of Parliament, unknown to many and known by few, should be sought by all, observes that, "It is much better to be learned out of the rolls of Parliament and other records and by precedents and con-

tinual experience than can be expressed by any one man." Chitty, in commenting upon the statement of Blackstone, has said:

"The law of Parliament is part of the general law of the land, and must be discovered and construed like all other laws. The members of the respective houses of Parliament are in most instances the judges of that law; and, like the judges of the realm, when they are deciding upon past laws they are under the most sacred obligation to inquire and decide what the law actually is, and not what, in their will and pleasure, or even in their reason and wisdom, it ought to be. When they are declaring what is the law of Parliament their character is totally different from that with which, as legislators, they are invested when they are framing new laws; and they ought never to forget the admonition of that great and patriotic chief justice, Lord Holt, viz, 'that the authority of the Parliament is from the law, and as it is circumscribed by law, so it may be exceeded; and if they do exceed those legal bounds and authority their acts are wrongful, and can not be justified any more than the acts of private men.' 1 Salk, 505." (Chitty's Blackstone, vol. 1, p. 119, note 21.)

It has always been conceded that the phrase "other high crimes and misdemeanors," embodied in Article II, section 4, of the Constitution of the United States, must be construed in the light of the definitions fixing its meaning in the parliamentary law of England as that law existed in 1787. The construction then given to the phrase in question was incorporated into our Federal Constitution as a part of the phrase itself, which is unintelligible and meaningless without such construction. The following elementary principles (as stated by Hon. William Lawrence, in the brief prepared by him for use in the trial of Andrew Johnson, Vol. I, pp. 125, 136) seem upon that occasion to have passed unchallenged:

"As these words are copied by our Constitution from the British constitutional and parliamentary law, they are, so far as applicable to our institutions and condition, to be interpreted not by English municipal law, but by the *lex parliamentaria*. * * * Whatever 'crimes and misdemeanors' were the subject of impeachment in England prior to the adoption of our Constitution, and as understood by its framers, are therefore subjects of impeachment before the Senate of the United States, subject only to the limitations of the Constitution. * * * 'Treason, bribery, and other high crimes and misdemeanors' are, of course, impeachable. Treason and bribery are specifically named, but 'other high crimes and misdemeanors' are just as fully comprehended as though each was specified.

"The Senate is made the *sole judge* of what they are. There is no revising court. The Senate determines in the light of parliamentary law. *Congress can not define or limit by law that which the Constitution defines in two cases by enumeration and in others by classification, and of which the Senate is sole judge.* * * * Now, when the Constitution says that all civil officers shall be removable on impeachment for high crimes and misdemeanors, and the Senate shall have the sole power of trial, the jurisdiction is conferred and its scope is defined by common parliamentary law."

While the Senate sitting as a court of impeachment is the sole and final judge of what impeachable "high crimes and misdemeanors" are, no arbitrary discretion so to determine is vested. The power of the court simply extends to the construction of the phrase in question as

defined in English constitutional and parliamentary law as it existed in 1787. That is made plain by Story in his *Commentary on the Constitution*, section 797, when he says:

"Resort, then, must be had either to parliamentary practice and the common law, in order to ascertain what are high crimes and misdemeanors, or the whole subject must be left to the arbitrary discretion of the Senate for the time being. The latter is so incompatible with the genius of our institutions that no lawyer or statesman would be inclined to countenance so absolute a despotism of opinion and practice, which might make that a crime at one time or in one person which would be deemed innocent at another time or in another person. The only safe guide in such cases must be the common law."

IV. A RULE OF CONSTITUTIONAL CONSTRUCTION AS DEFINED BY THE SUPREME COURT OF THE UNITED STATES.

The fundamental principles of English constitutional law were first reproduced in the constitutions of the several States. In the light of the construction put upon them there, they were embodied, so far as applicable and desirable, in the Constitution of the United States. Thus the Federal Supreme Court was called upon at an early day to interpret the immemorial formulas of "terms or art" through which the cardinal principles of English constitutional law were incorporated in our governmental systems, State and Federal. The uniform rule for construing such formulas or "terms of art" adopted at the outset has been continued in force until the present time.

When, in the trial of Aaron Burr, Chief Justice Marshall was called upon to construe Article III, section 3, of the Constitution, which provides that "treason against the United States shall consist only in *levying war* against them, or in adhering to their enemies, giving them aid and comfort," he said, "What is the natural import of the words 'levying war?' and who may be said to levy it?" * * * The term is not for the first time applied to treason by the Constitution of the United States. It is a technical term. It is used in a very old statute of that country whose language is our language and whose laws form the substratum of our laws. It is scarcely conceivable that the term was not employed by the framers of our Constitution in the sense which had been affixed to it by those from whom we borrowed it.

"So far as the meaning of any terms, particularly terms of art, is completely ascertained, those by whom they are employed must be considered as employing them in that ascertained meaning, unless the contrary be proved by the context. It is therefore reasonable to suppose, unless it be incompatible with other expressions of the Constitution, that the term 'levying war' is used in that instrument in the same sense in which it was understood in England and in this country to have been used in the statute of twenty-fifth of Edward III, from which it was borrowed." (Burr's Trial, vol. 2, pp. 401, 402.)

When in the case of *Murray v. The Hoboken Land Co.* (18 How., 272) it became necessary for the Supreme Court to construe the formula "due process of law," as embodied in the fifth amendment, Mr. Justice Curtis, speaking for the court, said: "The words 'due process of law' were undoubtedly intended to convey the same meaning as the words 'by the law of the land' in Magna Charta. Lord Coke, in his commentary on those words (2 Inst., 50), says they mean due process

of law. The constitutions which had been adopted by the several States before the formation of the Federal Constitution, following the language of the Great Charter more closely, generally contained the words 'but by the judgment of his peers, or the law of the land.' The ordinance of Congress of July 13, 1787, for the government of the territory of the United States northwest of the river Ohio, used the words."

When in the case of *Davidson v. New Orleans* (96 U. S., 97) it became necessary to again construe the same formula—"due process of law," as embodied in the fourteenth amendment—Mr. Justice Miller, speaking for the court, said: "The prohibition against depriving the citizen or subject of his life, liberty, or property without due process of law is not new in the constitutional history of the English race. It is not new in the constitutional history of this country, and it was not new in the Constitution of the United States when it became a part of the fourteenth amendment, in the year 1866.

"The equivalent of the phrase 'due process of law,' according to Lord Coke, is found in the words 'law of the land,' in the Great Charter, in connection with the writ of *habeas corpus*, the trial by jury, and other guarantees of the rights of the subject against the oppression of the Crown." In *Smith v. Alabama* (124 U. S., 465) it was held that "the interpretation of the Constitution of the United States is necessarily influenced by the fact that its provisions are framed in the language of the English common law, and are to be read in the light of its history," a statement affirmed by the adoption in *United States v. Wong Kim Ark* (169 U. S., 649).

V. IMMEMORIAL FORMULAS TRANSPLANTED FROM THE ENGLISH CONSTITUTION, UNCHANGEABLE BY SUBSEQUENT CONGRESSIONAL LEGISLATION.

The foregoing authorities put the fact beyond all question that the immemorial formulas or "terms of art" transferred from the English constitution to our own were adopted, not as isolated or abstract phrases, but as epitomes or digests of the great principles which they embodied. That is to say, the term "levying war" carried with it the identical meaning given it as a part of the statute of Edward III; the term "due process of law," the identical meaning given to it as a part of Magna Charta; the term "high crimes and misdemeanors," the identical meaning given it as a part of the law of the High Court of Parliament; or, in other words, when such formulas were embedded in the Constitution of 1787, their historical meaning and construction went along with them as completely as if such meaning and construction had been written out at length upon the face of the instrument itself.

If that be true, the conclusion is self-evident that no subsequent Congressional legislation can change in any way, by addition or subtraction, the definitions embodied in such formulas at the time of their adoption. If the contrary were true, Congress could any day give to the term "levying war" or "due process of law" a definition conveying ideas of which the fathers never dreamed; or if the term "high crimes and misdemeanors" could be subjected to a new Congressional definition, acts which were such in 1787 could be relieved of all criminality, and new acts not then criminal could be added to

the list of impeachable offenses. So obvious is the fact that Congress can not legislate at all on the subject that Mr. Lawrence, whose brief has been heretofore quoted, frankly admitted, while striving to give to the powers of Congress the widest possible construction, that "Congress can not define or limit by law that which the Constitution defines in two cases by enumeration, and in others by classification, and of which *the Senate is sole judge.*"

The last phase is specially suggestive of the fact that if Congress could, by subsequent legislation, "define or limit by law that which the Constitution defines," the Senate sitting as a court of impeachment could be entirely deprived by such legislation of the power to determine what were impeachable high crimes and misdemeanors as defined by the fathers in 1787. In other words, if Congress can add to or subtract from the constitutional definition in any particular, it can destroy it altogether.

In the great case of *Marbury v. Madison* (1 Cranch., 137), the first in which an act of Congress was ever declared unconstitutional, the question of questions was this: Does the fact that the Constitution itself has defined the original jurisdiction of the Supreme Court prohibit Congress from enlarging such original jurisdiction by subsequent legislation? The solemn answer was that the attempt of Congress to do so was void. Why? Because the dividing line between the original and appellate jurisdiction, having been drawn by the Constitution itself, it is immovable by legislation.

In the words of the great Chief Justice: "If Congress remains at liberty to give this court appellate jurisdiction where the Constitution has declared their jurisdiction shall be original, and original jurisdiction where the Constitution has declared it shall be appellate, the distribution of jurisdiction made in the Constitution is form without substance." Thus it follows that any act of Congress which attempts to change the constitutional definition of impeachable high crimes and misdemeanors, by adding to the list some offense unknown to the parliamentary law of England as it existed in 1787, is simply void and of no effect.

VI. IMPEACHMENTS IN ENGLAND: FIRST EPOCH.

The only pertinent definitions of the term "high crimes and misdemeanors," as contained in Article II, section 4, of the Federal Constitution, must be drawn (1) from the law of Parliament as it existed in 1787; (2) from the contemporaneous expositions of that law embodied in the constitutions of the several States. In order to present anything like an adequate statement of the English law of impeachment as it existed at the time in question, some account must be given of the process of growth through which it had passed prior to that time. The history of that growth is divided into two epochs, easily distinguishable from each other. The first begins with the proceedings against the Lords Latimer and Neville, which took place in the Good Parliament in the fiftieth of Edward III (1376).

These proceedings are regarded by the constitutional historians as the earliest instances of a trial by lords upon a definite accusation made by the Commons. (Hallam, M. A., Vol. III, p. 56; Stubbs, Const. Hist., Vol. II, p. 431.) Not until early in the reign of Edward III was Parliament definitely and finally divided into two houses that

deliberated apart; not until near the close of that reign did the Commons, as the grand jury of the whole realm, attempt to present persons accused of grave offenses against the State to the lords for trial. At the outset, the new method of accusation was rivaled by what were known as "appeals," which have been thus defined: "It was the regular course for private persons, even persons who were not members of Parliament, to bring accusations of a criminal nature in Parliament, upon which proceedings were had." (Stephen, *Hist. of the Criminal Law of England*, Vol. I, 151.)

The results of the private warfare thus instituted were so inconvenient that "appeals" were finally abolished by the statute of 1 Hen. 4, c. 14. Thus left without a rival, proceedings by impeachment were occasionally employed during the reigns of Richard II, Henry IV, Henry V, and Henry VI. In the reign last named Lord Stanley was impeached in 1459 for not sending his troops to the battle of Bloreheath. That trial terminates the first epoch in the history of the law of impeachment in England. It was not again employed during the period that divides 1459 from 1621, an interval of one hundred and sixty-two years.

The primary cause for the suspension is to be found in the fact that during that interval it was that the decline in the prestige and influence of Parliament was such that the directing power in the state passed to the King in council, the judicial aspect of which was known as "the star chamber." There it was that the great state trials took place during the reign of Edward IV and during the following reigns of the princes of the house of Tudor. Such impeachment trials as did take place during the first or formative epoch are not as distinctly defined as those that occurred during the later period, and have now only an antiquarian interest.

VII. IMPEACHMENTS IN ENGLAND, SECOND EPOCH.

With the revival of the powers of Parliament in the reign of James I, impeachment was resumed as a weapon of constitutional warfare. From that time its modern history, with which this discussion is concerned, really begins. The first impeachment case to occur during the second epoch was that of Sir Giles Mompesson in 1621; the last, that of Lord Melville in 1805. Including the first and last the total is fifty-four, catalogued by an eminent authority as follows:

- 1621. Sir Giles Mompesson. Proceedings against him for monopoly and abuse of patents. A private person. No definite articles presented in modern form.
- 1621. Lord Bacon. Lord Chancellor. *A judicial impeachment for bribery.*
- 1621. Sir F. Mitchell. Case identical with that of Sir Giles Mompesson. A private person.
- 1621. Sir H. Yelverton. Attorney-General, charged with improper conduct in his office, respecting persons concerned in monopolies and abuses of patents.
- 1625. The Earl of Middlesex. Lord treasurer, charged with high crimes and misdemeanors, including bribery and corruption.
- 1626. The Earl of Bristol. Charged with high treason.
- 1626. The Duke of Buckingham. Charged with high crimes and misdemeanors.
- 1640. The Earl of Strafford. Charged with high treason.
- 1640. The Lord Keeper Finch. Charged with high treason.
- 1640. Sir R. Berkley and other judges. A judicial impeachment. Charged with high treason and other great misdemeanors on account of judicial acts and opinions.
- 1641. Sir G. Ratcliffe. Charged with being concerned in the treasons of the Earl of Strafford.

1642. Archbishop Laud. Charged with high treason.
 1642. Dr. John Cosin. Impeached "for introducing Popish ceremonies."
 1642. Bishop Wren. Impeached "for favoring Popish ceremonies in the church."
 1642. Daniel O'Neill. Charged with participation in two army plots.
 1642. Sir E. Herbert. Attorney-general, impeached for high crimes and misdemeanors, in advising and delivering the articles against the Five Members.
 1642. Sir E. Dering. Impeached for high crimes and misdemeanors in contriving and presenting the Kentish petition.
 1642. Mr. Strode. Impeached for high treason. One of the Five Members.
 1642. Mr. Spencer. (Not reported in State Trials.)
 1642. Nine lords. (Not reported in State Trials.)
 1642. Sir R. Gurney. Lord mayor of London, impeached for high crimes and misdemeanors.
 1642. Mr. Hastings. Impeached for high treason in raising forces against the Parliament.
 1642. Marquis of Hertford. (Not reported in State Trials.)
 1642. Lord Strange. Impeached for high treason in raising forces against the Parliament.
 1642. Mr. Wilde. (Not reported in State Trials.)
 1642. Mr. Broccas. (Not reported in State Trials.)
 1681. Mr. Drake. Impeached for publishing a seditious pamphlet.
 1668. Lord Mordant. Impeached for high crimes and misdemeanors.
 1667. Lord Clarendon. Impeached for high treason and other high crimes and misdemeanors.
 1668. Sir W. Penn. Impeached for high crimes and misdemeanors.
 1678. Lord Stafford and four other Roman Catholic Lords. Impeached for participation in what is generally called the "Popish plot."
 1678. Lord Danby. Impeached for high treason and other high crimes and misdemeanors.
 1680. Edward Seymour. Impeached for misconduct in the office of treasurer of the navy.
 1680. Sir W. Scroggs. Chief Justice of the King's Bench. *A judicial impeachment.* Charged with high treason and other great crimes and misdemeanors.
 1680. Earl of Tyrone. (Not reported in State Trials.)
 1681. Fitz-Harris. Impeached of high treason in being concerned in the "Popish plot."
 1689. Sir A. Blair and others. Impeached of high treason, with others, for dispersing a treasonable and seditious paper.
 1689. Lord Salisbury. Impeached of high treason for departing from his allegiance and being reconciled with the Church of Rome.
 1689. Earl of Peterborough. Charged with the same offense.
 1695. Duke of Leeds. Impeached of high crimes and misdemeanors. Second impeachment of him.
 1698. John Goudet and others. (Not reported in State Trials.)
 1701. Lord Portland. Whig peer impeached by Tory House of Commons for promoting Spanish partition treaties in 1700.
 1701. Lord Somers. Same charge.
 1701. Lord Halifax. Same charge.
 1709. Dr. Sacheverell. Rector of St. Savior's, Southwark. Impeached for preaching two sermons inculcating unlimited passive obedience.
 1715. Lord Oxford, Tory minister. Impeached by Whig House of Commons for share in negotiating the peace of Utrecht in 1713.
 1715. Lord Bolingbroke. Same charge.
 1715. Duke of Ormond. Same charge.
 1715. Earl of Strafford. Impeached for misconduct as British plenipotentiary at Utrecht.
 1715. Lord Derwentwater. Impeached, with several others, for high treason.
 1724. Lord Macclesfield, Lord Chancellor. *A judicial impeachment for bribery.*
 1746. Lord Lovat. Impeached of high treason for being concerned in the rebellion of 1745.
 1787. Warren Hastings. Impeached on charges of misgovernment in India.
 1805. Lord Melville. Impeached for malversation in office respecting the appropriation of public money to his own use.

See Sir J. F. Stephen, *Hist. of the Crim. Law of Eng.*, vol. 1, p. 159, and *State Trials*, as to each case reported therein.

VIII. IMPEACHMENTS OF ENGLISH JUDGES.

An examination of the foregoing list reveals the fact that many of the impeachments in question were directed against private individuals, it having always been the law of England that all subjects, as well out of office as in office, might be thus accused and tried. A good illustration may be found in the notable case of Doctor Sacheverell, rector of St. Savior's, Southwark, who was impeached by the Commons and convicted by the Lords for having preached two sermons inculcating the doctrine of unlimited passive obedience. (State Trials, XV, p. 1.) As that branch of the law of impeachment which authorized the accusation of private individuals out of office was never reproduced in this country, cases of that class may be dismissed from consideration. By far the greater number of the remaining cases are what are known as "political impeachments," whereby one party in the state would attempt to crush its adversaries in office by impeaching them for high treason, which generally involved commitment to the Tower.

As illustrations, reference may be made to the case of Portland, Halifax, and Somers, three Whig peers impeached of high treason by a Tory House of Commons for their share in promoting the Spanish partition treaties in 1700; and to that of Oxford, Bolingbroke, and Ormond, Tory ministers impeached by the triumphant Whigs in the Commons for their share in negotiating the peace of Utrecht in 1713. (State Trials, Vol. XIV, p. 233; Parl. Hist., Vol. VII, p. 105.) A well-known English writer has described the latter as "the last instance of purely political impeachment." (Taswell-Langmead, Engl. Const. Hist., p. 549, note.)

Cases of that class shed but a dim light upon the definition of the term "high crimes and misdemeanors" as applied to those offenses for which English judges have been punished for misbehavior in office. No clear or authoritative definitions of the term in question can be found, as applied to that subject, outside of what are known as judicial impeachments as contradistinguished from political. As the purely judicial impeachment cases which have occurred in England are very few in number, their results may be stated within narrow limits.

The earliest of the accusations which have been made against English judges have been for the crime of bribery, the crime for which Lord Bacon was impeached by the Commons in 1621. The charges against Bacon particularly set forth instances of judicial corruption by the acceptance of bribes, and in his "confession and submission" he said: "I do plainly and ingeniously confess that I am guilty of corruption, and do renounce all defense." (State Trials, Vol. II, 1106.)

Such cases, though rare, had occurred before Bacon's time. In the words of Sir J. F. Stephen, Coke "gives two instances in which judges were punished for taking bribes, namely, Sir William Thorpe, in 1351, who took sums amounting in all to 90 pounds for not awarding an exigent against five persons at Lincoln assizes, and certain commissioners (probably special commissioners) of oyer and terminer, who were fined one thousand marks each for taking a bribe of four pounds. I have elsewhere referred to the impeachment of the Chancellor Michael de la Pole, by Cavendish, the fishmonger, for taking a bribe of forty pounds, three yards of scarlet cloth, and a quantity of fish, in the time of Richard II. * * *

"Lord Macclesfield was also impeached and removed from his office for bribery in 1725." (Hist. of the Crim. Law of Eng., Vol. III, pp. 251-52, citing as to the case of Lord Macclesfield Sixteen State Trials, p. 767.) That case was the last judicial impeachment in England. It is not therefore strange that bribery, as a distinct and substance offense, should have been named, *side by side with treason*, as an impeachable crime, in the Constitution of the United States. After the bribery cases of Lord Chancellor Bacon and Lord Chancellor Macclesfield have been subtracted from the foregoing list, but two judicial impeachments remain in the entire history of the English people. Only in those two cases have the Commons impeached and the Lords tried English judges upon charges of judicial misconduct other than bribery.

IX. IMPEACHMENT OF SIR ROBERT BERKLEY AND OTHER JUDGES.

In 1635 Charles I announced his intention to extend the exaction of ship money to the inland counties. When the writs of that year were resisted the judges gave answers in favor of the prerogative. When in 1636 another set of ship writs were issued Hampden made a test case by refusing to pay the assessment on his lands at Great Missenden, and the issue thus raised was argued in November and December, 1637, before a full bench.

The contention made in favor of the Crown was sustained by seven of the judges—Finch, chief justice of the common pleas; Bramston, chief justice of the king's bench; Berkley, one of the justices of that court; Crawley, one of the judges of the common pleas; Davenport, lord chief baron of the exchequer; Weston and Trevor, barons of that court. When the day of reckoning came Finch fled to Holland, and the remaining six were impeached by the Commons for their judgments rendered in favor of the royal contention, the charges being delivered to the Lords July 6, 1641. As Berkley's opinion in favor of the legality of ship money was the most emphatic, he was made the special object of attack in articles which charged him not only with the ship-money opinion, but with other acts of judicial misconduct on the bench.

The nature of the accusations against him can be best explained by extracts from the articles themselves, which open with the general statement "that the said Sir Robert Berkley, then being one of the justices of the said court of king's bench, hath traitorously and wickedly endeavored to subvert the fundamental laws and established government of the realm of England, and instead thereof to introduce an arbitrary and tyrannical government against law, which he hath declared, by traitorous and wicked words, opinions, judgments, practices, and actions appearing in the several articles ensuing."

The following are a fair sample of the special charges: "4. That he, the said Robert Berkley, then being one of the justices of the King's Bench, and having taken an oath for the due administration of justice, according to the laws and statutes of the realm, to His Majesty's liege people, on or about the last of December subscribed an opinion, *in hoc verba*: 'I am of opinion, that where the benefit doth more particularly redound to the good of the ports,' etc. * * *

"6. That he, the said Sir Robert Berkley, then being one of the justices of the Court of King's Bench, and duly sworn as aforesaid,

did on ——— deliver his opinion in the exchequer chamber against John Hampden, esq., in the case of ship money. * * * 7. That he, the said Sir Robert Berkley, then being one of the justices of the Court of King's Bench, and one of the justices of the assize for the county of York, did, at the assizes held at York in Lent, 1636, deliver his charge to the grand jury, 'that it was a lawful and inseparable flower of the Crown for the King to command, not only the maritime counties, but also those that were inland, to find ships for the defense of the kingdom.' * * *

"8. The said Sir R. Berkley, then being one of the justices of the Court of King's Bench, in Trinity term last, then sitting on the bench in said court, upon debate of the said case between the said Chambers and Sir E. Bromfield, said openly in the court, 'that there was a rule of law and a rule of government;' and that 'many things which might not be done by the rule of law might be done by the rule of government;' and would not suffer the point of legality of ship money to be argued by Chambers's counsel. * * *

"9. The said Sir R. Berkley, then and there sitting on the bench, did revile and threaten the grand jury returned to serve at the said session, for presenting the removal of the communion table in All Saints Church in Hertford aforesaid. * * * 11. He, the said Sir R. Berkley, being one of the justices of the said Court of King's Bench, and sitting in said court, deferred to grant a prohibition to the said Court-Christian in said cause, although the counsel did move in the said court many several times, and several times, for a prohibition." (State Trials, vol. 3, pp. 1283-1291.) The impeachment against Berkley ended in his paying a fine of £10,000.

X. IMPEACHMENT OF SIR WILLIAM SCROGGS, CHIEF JUSTICE OF THE KING'S BENCH.

In the reign of Charles II, Sir William Scroggs, chief justice of the King's Bench, was impeached of high crimes and misdemeanors, the nature of which may be best explained by the following extracts from the articles themselves. The general accusation is "that the said William Scroggs, then being chief justice of the Court of King's Bench, hath traitorously and wickedly endeavored to subvert the fundamental laws and the established religion and government of this Kingdom of England, and, instead thereof, to introduce popery and arbitrary and tyrannical government against law, which he has declared by divers traitorous and wicked words, opinions, judgments, practices, and actions."

Chief among the special charges are the following: "II. That he, the said Sir William Scroggs, in Trinity term last, being then chief justice of the said court, and having taken an oath duly to administer justice according to the laws and statutes of this realm, in pursuance of his said traitorous purposes, did, together with the rest of the justices of the said court, several days before the end of said term, in an arbitrary manner, discharge the grand jury which then served for the hundred of Oswaldston, in the county of Middlesex, before they had made their presentments, etc. * * *

"III. That, whereas one Henry Carr had, for some time before, published every week a certain book, entitled 'The Weekly Pacquet of Advice from Rome, or The History of Popery,' wherein the superstitions and cheats of the Church of Rome were from time to time exposed,

he, the said Sir William Scroggs, then chief justice of the Court of King's Bench, together with the other judges of the said court, before any legal conviction of the said Carr of any crime, did in the said Trinity term, in a most illegal and arbitrary manner, make and cause to be entered a certain rule of that court against the printing of said book, *in hæc verba*. * * *

"IV. That the said Sir William Scroggs, since he was made chief justice of the King's Bench, hath, together with the other judges of the said court, most notoriously departed from all rules of justice and equality in the imposition of fines upon persons convicted of misdemeanors in said court." The result was that the chief justice was removed from office and given a pension for life. (State Trials, Vol. VIII, pp. 195, 216.)

XL PROCEEDINGS AGAINST LORD CHIEF JUSTICE KEELING.

Intervening between the case of Berkley and other judges (1640) and that of Sir William Scroggs (1680) are proceedings by the Commons against Lord Chief Justice Keeling, which occurred in 1667, notable for the reason that they clearly illustrate what kind of judicial acts were considered as impeachable high crimes and misdemeanors at that time. "A copy of Judge Keeling's case, taken out of the Parliament Journal, December 11, 1667: 'The House resumed the hearing of the rest of the report touching the matter of restraint upon juries; and that upon the examination of divers witnesses, in several causes of restraints put upon juries, by the Lord Chief Justice Keeling; whereupon the committee made their resolutions, which are as follows:

"1. That the proceedings of the Lord Chief Justice, in the cases now reported, are innovations in the trial of men for their lives and liberties; and that he hath used an arbitrary and illegal power, which is of dangerous consequence to the lives and liberties of the people of England, and tends to the introducing of an arbitrary government. 2. That in the place of judicature, the Lord Chief Justice hath undervalued, vilified, and condemned Magna Charta, the great preserver of our lives, freedom, and property. 3. That he be brought to trial, in order to condign punishment, in such manner as the House shall judge most fit and requisite." (State Trials, vol. 6, p. 991, seq.)

"On the 16th of October, 1667, the House being informed 'that there have been some innovations of late in trials of men for their lives and deaths, and in some particular cases restraints have been put upon juries in the inquiries,' this matter is referred to a committee. On the 18th of November this committee are empowered to receive information against the Lord Chief Justice Keeling for any other misdemeanors besides those concerning juries. And on the 11th of December, 1667, the committee report several resolutions against the Lord Chief Justice Keeling of *illegal and arbitrary proceedings in his office*. The chief justice desiring to be heard, he is admitted on the 13th of December and heard in his defense to the matters charged against him, and being withdrawn, the House resolve 'that they will proceed no farther in the matter against him.'" (4 Hatsel Prec., pp. 123-4, cited in Chase's Trial, Vol. II, p. 461.)

XII. REMOVAL BY ADDRESS PROVIDED BY THE ACT OF SETTLEMENT.

By the foregoing analysis of the only English precedents to which we can look for expositions of the meaning of the phrase "high crimes and misdemeanors," as applied to the conduct of English judges, the fact is put beyond all question that the only judicial acts which the House of Commons ever regarded as falling within that category are such acts as a judge performs while sitting upon the bench, administering the laws of the realm, either between private persons or between the Crown and the subject.

In the case of Mr. Justice Berkley the gravamen of the charge was that he rendered a judgment in the matter of ship money in conflict with what his triers considered the law of the realm to be. In the case of Chief Justice Scroggs the gravamen of the charge was that he arbitrarily discharged grand juries; that in a libel case he rendered an illegal judgment, and that he imposed unjust fines upon those convicted of misdemeanors. In the proceedings against Chief Justice Keeling the gravamen of the charge was that he had put "restraint" upon juries by fining them for their verdicts. "Wagstaff and others of a jury were fined an hundred marks a piece by Lord Chief Justice Keeling." (4 Hatsell Prec., p. 124, note.)

Excepting bribery there is no case in the parliamentary law of England which gives color to the idea that the personal misconduct of a judge, *in matters outside of his administration of the law in a court of justice*, was ever considered or charged to constitute a high crime and misdemeanor. When the question is asked by what means is the personal misconduct of an English judge, *not amounting to a high crime and misdemeanor*, punished, the answer is easy.

Prior to the passage in 1701 of the famous act of settlement (12 and 13 Will. III, C. 2) neither the tenure nor the compensation of English judges rested upon a firm or definite foundation. Hallam (Const. Hist., Vol. III, p. 194) tells us that "it had been the practice of the Stuarts, especially in the last years of their dynasty, to dismiss judges, without seeking any other pretense, who showed any disposition to thwart government in political prosecutions."

As the hasty and imperfect bill of rights had failed to provide a remedy for that condition of things, it became necessary for the authors of the act of settlement, "the complement of the Revolution itself and the bill of rights," to provide that English judges should hold office during good behavior (*quandiu se bene gesserint*), and that they should receive ascertained and established salaries. But, while the judges were being thus entrenched in their offices, the fact was not forgotten that the remedy by impeachment extended only to high crimes and misdemeanors which did not embrace personal misconduct. Therefore a method of removal was provided by address, which was intended to embrace all misconduct not included in the term "high crimes and misdemeanors."

In the light of that statement it will be easier to understand the full purport of that section of the act of settlement which provides "that after the said limitations shall take effect as aforesaid, judges' commissions be made *quandiu se bene gesserint*, and their salaries ascertained and established; but upon the address of both Houses of Parliament it may be lawful to remove them." Thus, for seventy-five years prior to the severance of the political tie which bound the English colonies in

America to the parent State, the twofold method for the removal of English judges was clearly defined and perfectly understood on both sides of the Atlantic.

That twofold method embraced (1) the removal by impeachment for all acts constituting "high crimes and misdemeanors," a term then clearly defined in English parliamentary law; (2) the removal by address for all lesser acts of personal misconduct not embraced within that. That such was the general and accepted view on this side of the Atlantic in 1776 of the English parliamentary law on impeachment and address will be put beyond all question by the following references to the several State constitutions in which that law reappeared.

XIII. IMPEACHMENT AND ADDRESS AS DEFINED IN THE CONSTITUTIONS OF THE SEVERAL STATES.

On May 10, 1776, the Continental Congress recommended to the several conventions and assemblies of the colonies the establishment of independent governments "for the maintenance of internal peace and the defence of their lives, liberties, and properties." (Charters and Constitutions, vol. 1, p. 3.) Before the end of the year in which that recommendation was made the greater part of the colonies had adopted written constitutions, in which were restated, in a dogmatic form, all of the vital principles of the English constitutional system.

Illustrations of the adoption of the England plan for the removal of judges by impeachment and address may be drawn from the following State constitutions: The constitution of Pennsylvania of 1776, Article V, section 2, provides that "the judges of the supreme court and of the several courts of common pleas shall hold their offices during good behavior. But for any reasonable cause, *which shall not be sufficient ground for impeachment*, the governor may remove any of them, on the address of two-thirds of each branch of the legislature."

The constitution of Delaware of 1792, Article VI, section 2, provides that "the chancellor and the judges of the supreme court of common pleas shall hold their office during good behavior; but for any reasonable cause, *which shall not be sufficient ground for impeachment*, the governor may, in his discretion, remove any of them on the address of two-thirds of all the members of each branch of the legislature." The constitution of South Carolina of 1868, Article VII, section 4, provides that "for any willful neglect of duty or other reasonable cause, *which shall not be sufficient ground of impeachment*, the governor shall remove any executive or judicial officer on the address of two-thirds of each house of the general assembly."

Here are explicit and dogmatic statements of the settled rule of English parliamentary law that judges may be removed by impeachment for grave offenses of judicial misconduct, and by address for lesser offenses of personal misconduct. As this distinction was so well known, many of the State constitutions simply presuppose it without stating it in express terms. The constitution of Massachusetts of 1780, Chapter III, article 1, after providing for removal by impeachment, declares that "all judicial officers duly appointed, commissioned, and sworn shall hold their offices during good behavior, excepting such concerning whom there is different provision made in this constitution. Provided, nevertheless, the governor, with consent

of the council, may remove them upon the address of both houses of the legislature."

The constitution of Georgia of 1798, Article III, section 1, provides that "the judges of the superior court shall be elected for a term of three years, removable by the governor on the address of two-thirds of both houses for that purpose, or by impeachment and conviction thereon." The constitution of New Hampshire of 1784, Article I, part 2, provides that "all judicial officers, duly appointed, commissioned, and sworn, shall hold their offices during good behavior, excepting those concerning whom there is a different provision made in this constitution: Provided, nevertheless, the president, with the consent of council, may remove them upon the address of both houses of the legislature."

The constitution of Connecticut of 1818, Article V, section 3, provides that "the judges of the supreme court and of the superior court shall hold their offices during good behavior; but may be removed by impeachment, and the governor shall also remove them on the address of two-thirds of the members of each house of the general assembly." It is said that the constitution of New York of 1777 was the model from which the impeachment clauses of the Constitution of the United States were copied. (6 Am. Law Reg., N. S., 277.)

The New York constitution of that date expressly limited impeachment to persons in office, and omitted removal by address. Such an omission was, however, exceptional. The rule was to introduce into the State constitutions both processes of removal by impeachment and address. And if it were not for fear of wearying the court by reiteration, the list of instances could be greatly lengthened in which both methods were introduced into later State constitutions not here mentioned, together with the recognized distinction between impeachable offenses and the lesser acts of misconduct justifying only removal by address, expressed in the words "not sufficient ground of impeachment." (See Appendix.)

XIV. ENGLISH PARLIAMENTARY LAW OF IMPEACHMENT AS EMBODIED IN THE CONSTITUTION OF THE UNITED STATES.

Before the Federal Convention of 1787 met the original State constitutions had been in operation for at least ten years. As a general rule the framers looked to that source for light when the adoption of a principle of English constitutional law was concerned.

The questions that constantly arose were: In what form has such a principle reappeared in the several States? Is its operation and effect satisfactory therein? Such examples were sometimes taken, however, not as guides, but as warnings. It did not always follow that a principle adapted to the wants of a single State was to be ingrafted without modification upon the constitution of a Federal State. The debates touching the adoption of impeachment and address pointedly illustrate that fact, as the Convention resolved to adopt the one without the other. The record is specially clear and direct upon that point. In the Madison Papers, pp. 481-482, the following appears:

"Article 11 being taken up, Doctor Johnson suggested that the judicial power ought to extend to equity as well as law, and moved to insert the words 'both in law and equity' after the words 'United States,' in the first line of the first section."

Mr. Read objected to vesting these powers in the same court.

On the question, New Hampshire, Connecticut, Pennsylvania, Virginia, South Carolina, Georgia, aye—6; Delaware, Maryland, no—2; Massachusetts, New Jersey, North Carolina, absent.

On the question to agree to article 11, section 1, as amended, the States were the same as on the preceding question.

Mr. Dickinson moved, as an amendment to article 11, section 2, after the words "good behavior," the words, "*Provided that they may be removed by the Executive on the application by the Senate and House of Representatives.*" (The words of the Act of Settlement are, "but upon the address of both houses of Parliament, it may be lawful to remove them.") Mr. Gerry seconded the motion. Mr. Gouverneur Morris thought it a contradiction in terms to say that the judges should hold their offices during good behavior and yet be removable without a trial. Besides, it was fundamentally wrong to subject judges to so arbitrary an authority.

Mr. Sherman saw no contradiction or impropriety if this were made a part of the constitutional legislation of the judiciary establishment. *He observed that a like provision was contained in the British statutes.*

Mr. RUTLEDGE. If the Supreme Court is to judge between the United States and particular States, this alone is an insuperable objection to the motion.

Mr. Wilson considers such a provision in the British Government as less dangerous than here, the House of Lords and House of Commons being less likely to concur on the same occasions. Chief Justice Holt, he remarked, had *successively* offended, by his independent conduct, both houses of Parliament. Had this happened at the same time he would have been ousted. The judges would be in a bad situation if made to depend on any gust of faction which might prevail in the two branches of our Government. *Mr. Randolph opposed the motion, as weakening too much the independence of the judges.*

Mr. Dickinson was not apprehensive that the legislature, composed of different branches, constructed on such different principles, would improperly unite for the purpose of displacing a judge.

On the question for agreeing to Mr. Dickinson's motion, it was negatived.

Connecticut, aye; all the other States present, no.

Thus the proposition to engraft upon our Federal Constitution that provision of the Act of Settlement, specially referred to in the debate by Mr. Sherman, was rejected with only one dissenting voice. When, at another time, Mr. Dickinson attempted to provide that the President should be removed by address, his proposal was rejected by the same majority. As Mr. William Lawrence (*Impeachment of Andrew Johnson*, Vol. I, p. 135) has stated it: "Removal on the address of both houses of Parliament is provided for in the Act of Settlement, 3 Hallam, 262. In the convention which framed our Constitution, June 2, 1787, Mr. John Dickinson, of Delaware, moved 'that the Executive be made removable by the National Legislature on the request of a majority of the legislatures of individual States.' Delaware alone voted for this, and it was rejected. *Impeachment was deemed sufficiently comprehensive to cover every proper case for removal.*" The last sentence states the essence of the whole matter. The convention resolved that neither the executive nor judicial officers of the United States should

be removed from office except "on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors."

As a well-known authority has expressed it: "The first proposition was to use the words, 'to be removable on impeachment and conviction for *malpractice and neglect of duty*.' It was agreed that these expressions were too general. They were therefore stricken out. It was voted that the clause should be simply 'removable on impeachment.' The debate shows that the members did not wish the Senate to be able to remove a civil officer whenever he acted in a way detrimental to the public service, for such a power was expressly refused. (Citing Madison Papers, p. 481, heretofore quoted.)

"A general debate took place on a clause in one draft which made the President triable only for treason and bribery. It was urged that the jurisdiction was too limited. The following are extracts from the debate which ensued: Colonel Mason said: 'Treason, as defined in the Constitution, will not reach many great and dangerous offenses. Hastings is not guilty of treason. Attempts to subvert the Constitution may not be treason as above defined.' He moved to insert after 'bribery' the words '*or maladministration*.' Madison: 'So vague a term will be equivalent to a tenure during the pleasure of the Senate.' Mason withdrew '*maladministration*,' and substituted 'other high crimes and misdemeanors against the State.'

"In the final draft the words 'against the State' were admitted, doubtless as surplusage, and the expressions finally adopted, 'crimes' and 'misdemeanors,' were words which had a well-defined signification in the courts of England and in her colonies as meaning criminal offenses at common (parliamentary) law." American Law Review, vol. 16, p. 804. Article on "Impeachable offenses under the Constitution of the United States." The term "common" instead of "parliamentary" law is carelessly used in that excellent statement, as it often is elsewhere. After quoting Rawle on Const., 200, Lawrence (Johnson's Imp., Vol. I, p. 125) remarks: "This author says in reference to impeachments, 'we must have recourse to the common law of England for the definition of them;' that is, to the *common parliamentary law*. (3 Wheaton, 610; 1 Wood, and Minot, 448.)"

XV. IMPEACHMENT TRIALS UNDER THE CONSTITUTION OF THE UNITED STATES.

Seven impeachment trials have taken place under the machinery provided for that purpose by the Constitution of the United States: That of William Blount (1798), that of John Pickering (1803), that of Samuel Chase (1804), that of James H. Peck (1830), that of West H. Humphreys (1862), that of Andrew Johnson (1868), and that of William W. Belknap (1876). Three of the foregoing were political impeachments and four judicial, as those terms are understood in English parliamentary law.

The articles presented by the House of Representatives against the four judges—Pickering, Chase, Peck, and Humphreys—illustrate in the most emphatic manner possible that the popular branch of Congress has heretofore always perfectly understood the meaning of the term "high crimes and misdemeanors," as applied to the misconduct for which a judge may be impeached. When placed side by side with the English precedents on that subject heretofore examined they agree in

every particular. The House of Representatives, in the only four cases of the kind ever tried, limited its accusations, *with the greatest strictness*, to the acts of judgment *performed by the judge on the bench*, as contradistinguished from personal acts performed by the judge while in office, which might have been the ground of removal by address.

Turning first to the case against John Pickering, judge of the district court of New Hampshire, for practical illustrations, we find that judge charged with misconduct while adjudicating a certain admiralty case pending in said district court: "Yet the said John Pickering, being then judge of the said district court, and then in court sitting, with intent to defeat the just claims of the United States, did refuse to hear the testimony of the said witnesses so as aforesaid produced in behalf of the United States, and without hearing the said testimony so adduced in behalf of the United States in the trial of said cause did order and decree the ship *Eliza*, with her furniture, tackle, and apparel, to be restored to the said Eliphalett Ladd, the claimant, contrary to his trust and duty as judge of the said district court, in violation of the laws of the United States and to the manifest injury of their revenue." (Art. II.)

Again (Art. III), when an appeal was prayed in open court in behalf of the United States, the charge is that "the said John Pickering, judge of the said district court, disregarding the authority of the laws, and wickedly meaning and intending to injure the revenues of the United States, and thereby to impair their public credit, did absolutely and positively refuse to allow the said appeal as prayed for."

And again (Art. IV), after the statement was made that said Pickering was "a man of loose morals and intemperate habits," he was thus accused: "On the eleventh and twelfth days of November, in the year one thousand eight hundred and two, being then judge of the district court in and for the district of New Hampshire, *did appear upon the bench of said court*, for the purpose of administering justice, in a state of total intoxication, produced by the free and intemperate use of inebriating liquors, and did then and there frequently, in a most profane and indecent manner, invoke the name of the Supreme Being, to the evil example of all good citizens of the United States, and was *then and there* guilty of other high misdemeanors, disgraceful to his own character as a judge and degrading to the honor and dignity of the United States."

It should be specially noted here that no pretense was made that "loose morals and intemperate habits" or profanity constituted a high crime and misdemeanor. Upon the contrary, the accusation was strictly limited to acts done "*upon the bench of the said court*" while "administering justice in a state of total intoxication." There was no attempt in Pickering's case to claim that personal misconduct, which might have been the ground of removal by address, was an impeachable offense.

The articles of impeachment presented against Judge Samuel Chase contain equally pointed illustrations. In Article I he is charged with delivering an opinion in writing on the question of law, on the construction of which the defense of the accused materially depended, tending to prejudice the minds of the jury against the said John Fries, the prisoner, before the counsel had been heard in his defense; in Article II the charge is that "the said Samuel Chase, with intent to

oppress and procure the conviction of the said Callender, did overrule the objection of John Bassett, one of the jury, who wished to be excused from serving on said trial;" in Article III the charge is that on the trial the judge refused to permit a witness to testify; in Article IV the charge is of various acts of judicial misconduct during a trial; and in the remaining articles the charges are of various acts of judicial misconduct on the bench in charging and refusing to discharge grand juries.

The accusation against Judge James H. Peck was contained in a single article, based upon the judicial conduct of the judge while sitting upon the bench in a case of contempt against Luke E. Lawless, who had published a newspaper article criticising a judgment rendered by Judge Peck in a case in which Lawless was plaintiff's counsel. The gravamen of the charge was this:

"The said James H. Peck, judge as aforesaid, did afterwards, on the same day, under the color and pretenses aforesaid, and with intent aforesaid, in the said court, then and there unjustly, oppressively, and arbitrarily order and adjudge that the said Luke Edward Lawless, for the cause aforesaid, should be committed to prison for the period of twenty-four hours, and that he should be suspended from practicing as an attorney or counsellor at law in the said district court for the period of eighteen calendar months from that day; and did then and there further cause the said unjust and oppressive sentence to be carried into execution."

The impeachment of Judge West H. Humphreys was begun and concluded during the civil war. He was tried and condemned in his absence and without a hearing. While such an anomalous proceeding can have but little weight as a precedent, what it does contain of matter relevant to a judicial impeachment supports the contention made herein. The first charge contained in the articles presented against Judge Humphreys was that he was guilty of treason, in that he "then being district judge of the United States, as aforesaid, did then and there, to wit, within said State, unlawfully and in conjunction with other persons, organize armed rebellion against the United States *and levy war against them.*" When the allegations incident to the accusation of treason are subtracted from the articles, all that remains is a charge of judicial misconduct upon the part of Judge Humphreys while sitting in a court of the Confederate States.

The words of the accusation are that the said Humphreys "did unlawfully act as judge of an illegally constituted tribunal within said State, called the district court of the Confederate States of America, and as judge of said tribunal last named, said West H. Humphreys, with the intent aforesaid, then and there assumed and exercised powers unlawful and unjust, to wit, in causing one Perez Dickinson, a citizen of said State, to be unlawfully arrested and brought before him, as judge of said alleged court of said Confederate States of America, and required him to swear allegiance to the pretended government of said Confederate States of America; * * *

"In decreeing within said State, and as judge of said illegal tribunal, the confiscation to the use of said Confederate States of America, of property of citizens of the United States, and especially of property of one Andrew Johnson and one John Catron." Thus in this anomalous proceeding, carried on amid the passions of a great civil war, the idea was not for one moment lost sight of that the misconduct upon

the part of a judge, which constitutes an impeachable high crime and misdemeanor, must occur while he is actually presiding in a judicial tribunal and abusing its powers.

XVI. WHY THE PLEAS INTERPOSED TO THE FIRST SEVEN ARTICLES OF IMPEACHMENT AGAINST JUDGE SWAYNE SHOULD BE SUSTAINED.

If the foregoing argument is a sound one, the following conclusions have been fixed upon a firm foundation:

First. That the definition of the term "high crimes and misdemeanors," as employed in Article II, section 4 of the Constitution, must be drawn from the parliamentary law of England as it existed in 1787, construed in the light of the contemporaneous expositions of that law embodied in the provisions of the constitutions of the several States as to impeachment and address.

Second. That the definition of that term, as thus fixed at the time of the adoption of the Federal Constitution, is organic and unchangeable by subsequent Congressional legislation; that no act, not an impeachable offense when the Constitution was adopted, can be made so by a subsequent act of Congress.

Third. That the "high crimes and misdemeanors" for which English judges were impeachable in 1787 can only be clearly ascertained from an examination of what are known as the English judicial impeachment cases, as contradistinguished from the political.

Fourth. That English judges have never been impeached except for bribery, or for judicial misconduct occurring in the actual administration of justice in court, either between private individuals or between the Crown and the subject.

Fifth. That since the act of settlement (1701), when the tenure and compensation of English judges was first fixed on a definite basis, such judges have been removable for judicial misconduct, *not amounting to an impeachable high crime and misdemeanor*, by address.

Sixth. That the plain distinction between the acts for which a judge may be impeached and the acts for which he may be removed by address was clearly recognized and defined in the constitutions of many of the States.

Seventh. That after careful consideration and debate the Federal Convention of 1787, with only one dissenting vote, rejected the proposition to embody the removal of Federal judges by address in the Constitution of the United States "as weakening too much the independence of the judges." After rejecting the more ample provisions upon the subject of impeachment embodied in some of the State constitutions, it was resolved that Federal judges should only be removed by impeachment for and conviction of "high crimes and misdemeanors" in the limited sense in which that phrase was defined in the parliamentary law of England as it existed in 1787.

Eighth. That in no one of the four judicial impeachments which have taken place since the adoption of our Federal Constitution has the House of Representatives ever attempted to impeach a Federal judge for "high crimes and misdemeanors," except in those cases in which he would have been impeachable under the English parliamentary precedents. That is to say, the proceedings against Justice Berkley and other judges (1640), the proceedings against Chief Justice Keeling (1667), the proceedings against Chief Justice Scroggs (1680),

the proceedings against Judge Pickering (1803), the proceedings against Judge Chase (1804), the proceedings against Judge Peck (1830), the proceedings against Judge Humphreys (1862), so far as they relate to judicial misconduct, rest upon a single proposition, which is this:

In English and American parliamentary and constitutional law the judicial misconduct which rises to the dignity of a high crime and misdemeanor must consist of judicial acts, *performed with an evil or wicked intent*, by a judge while administering justice in a court, either between private persons or between a private person and the government of the State. All personal misconduct of a judge, occurring during his tenure of office and not coming within that category, must be classed among the offenses for which a judge may be removed by address, A METHOD OF REMOVAL WHICH THE FRAMERS OF OUR FEDERAL CONSTITUTION REFUSED TO EMBODY THEREIN.

When the allegations contained in articles 1, 2, and 3, presented against this respondent, are examined, it appears that they set forth in three forms an identical charge, which is in substance that the respondent, in settling his accounts with certain United States marshals under a certain act of Congress providing for the reasonable expenses for travel and attendance of a district judge when lawfully directed to hold court outside of his district, exacted and received in payment for such expenses from the said marshals sums in excess of the amounts contemplated in said act.

It is charged that such acts constitute "a high crime, to wit, the crime of obtaining money from the United States by a false pretense, and of a high misdemeanor in office." The short answer to such a charge is that no such offence was ever thought of or defined in the parliamentary law of England as a high crime and misdemeanor in 1787, or at any other time; that it bears no relation whatever to the acts known in English parliamentary law as an impeachable offence. If it be true, as alleged, that the respondent was guilty in making such settlements of "obtaining money from the United States by a false pretense," then the remedy is by indictment by a grand jury and a trial by a petit jury, as in the case of any other citizen of the country.

The Constitution expressly provides, Article I, section 3, that persons subject to impeachment "shall nevertheless be liable and subject to indictment, trial, judgment, and punishment according to law." While it is quite possible to understand how such personal misconduct upon the part of a judge, entirely disconnected with the conduct of judicial business on the bench, might subject him to removal by address in a State which had adopted that plan of removal for non-impeachable offenses, it is hard to conceive how any effort of the imagination could reach the conclusion that such an act constitutes an impeachable high crime and misdemeanor as defined in English parliamentary law.

The same comments are applicable to the charges made in articles 4 and 5 as to the use by the respondent of a certain car belonging to a certain railroad, "the said railroad company being at the time in the possession of a receiver appointed by said Charles Swayne, judge as aforesaid, on the petition of creditors." Even if it could be established that the circumstances attending such a transaction would warrant removal by address, no advance would be made toward the conclusion that such acts constitute an impeachable high crime and misdemeanor

as defined in English parliamentary law, because the further allegation that "the said Charles Swayne, acting as judge, allowed the credit claimed by the said receiver for and on account of the said expenditure as part of the necessary expenses of operating said road" falls far short of the English and American rule *as to the evil or wicked intent* which must accompany a judgment or opinion delivered on the bench in order to render it impeachable.

Nothing is better settled than the fact that a judge is not impeachable even for a judgment, order, or opinion rendered contrary to law unless it is alleged and proved that it was rendered with *an evil, wicked, or malicious intent*. Justice Berkley was impeached not simply because he decided in favor of ship money, but because he "traitorously and wickedly endeavored to subvert the fundamental laws" of the realm thereby. Chief Justice Scroggs was impeached not simply for imposing "fines upon persons convicted of misdemeanors in said court," but because he imposed them "for the further accomplishing of his said traitorous and wicked purposes."

Justice Chase was impeached because he "with intent to oppress and procure the conviction of the said Callender did overrule the objection of John Bassett, one of the jury;" "that, with intent to oppress and procure the conviction of the prisoner, the evidence of John Taylor, a material witness on behalf of the aforesaid Callender, was not permitted by the said Samuel Chase to be given in." Judge Peck was impeached not because he punished Lawless for contempt, but because he did so "with intention wrongfully and unjustly to oppress, imprison, and otherwise injure the said Luke Edward Lawless under color of law, * * * under the color and pretense aforesaid and with the intent aforesaid, in the said court then and there did unjustly, oppressively, and arbitrarily order and adjudge," etc.

If further illustrations of the necessity for averments as to the wicked and malicious intent with which a judicial act must be performed need be given, they may be drawn from articles 8, 9, 10, 11, and 12, presented against this respondent, in which impeachable offenses are properly charged under the rule which the Constitution prescribes—that is to say, the rule of English parliamentary law. It is charged in one article that the said Charles Swayne "did *maliciously and unlawfully adjudge* guilty of contempt of court and impose a fine of \$100 upon and commit to prison for a period of ten days E. T. Davis, an attorney at law, for an alleged contempt of the circuit court of the United States;" and in another that he "did *maliciously and unlawfully adjudge* guilty of a contempt of court and impose a fine of \$100 upon and commit to prison for a period of ten days Simeon Belden, an attorney and counselor at law, for an alleged contempt of the circuit court of the United States."

With the plain and settled rule thus recognized clearly in view, the draftsmen of articles 4 and 5 have not only failed to charge that the respondent "allowed the credit claimed by said receiver for and on account of the said expenditure," etc., "*maliciously and unlawfully*," but what is more to the point, they have failed to charge that he did so "*knowingly*." There is no reason to suppose, in the absence of such an allegation, that a judge, approving the mass of accounts presented to the court by a receiver of a railroad, would have personal knowledge of every trivial item which such accounts contain. The presumption is clearly to the contrary. In articles 4 and 5 there is no

charge either that the respondent ever "knowingly" passed upon the items of expense in question or that he approved them "maliciously and unlawfully." In the absence of such allegations articles 4 and 5 fall to the ground.

The charge of nonresidence contained in article 6 presupposes the validity of section 551, Revised Statutes of the United States, which provides that "a district judge shall be appointed for each district, except in cases hereinafter provided. Every judge shall reside in the district for which he is appointed, *and for offending against this provision shall be deemed guilty of a high misdemeanor.*" If the foregoing argument proves anything, it is the fact that when the phrase "high crimes and misdemeanors" was embodied in the Federal Constitution in 1787 it drew along with it, *as an integral part of it*, the definitions which fixed its meaning in English parliamentary law at that time. The phrase, coupled with the definitions of it, thus became organic and unchangeable by subsequent Congressional legislation, just as the definition of the original and appellate jurisdiction of the Supreme Court became organic and unchangeable.

The convention pointedly refused to make impeachable offenses an uncertain or changeable quantity. "The first proposition was to use the words 'to be removable on impeachment and conviction for malpractice and neglect of duty.' It was agreed that these expressions were too general. They were therefore stricken out. * * * Colonel Mason said: 'Treason, as defined in the Constitution, will not reach many great and dangerous offenses. Hastings is not guilty of treason. Attempts to subvert the Constitution may not be treason as above defined.' He moved to insert after 'bribery' the words 'or maladministration.' Madison: 'So vague a term will be equivalent to a tenure during the pleasure of the Senate.' Mason withdrew 'maladministration' and substituted 'other high crimes and misdemeanors against the State.'" (American Law Review, vol. 16, p. 804.)

The fathers knew exactly the limitations of the phrase adopted, and they repelled the idea that it was ever to be enlarged or diminished. If nonresidence of a judge in his district could be *added by Congress to the list of impeachable offenses* that list could be thus indefinitely extended, or, by the same authority, every impeachable offense as understood in 1787 could be abolished. If it is admitted that Congress can change the organic definition, either by addition or subtraction, it follows as clearly as a mathematical demonstration that the scheme of impeachment provided in the Constitution can be entirely remodeled by legislation. The validity of the section in question, making nonresidence a high misdemeanor, can not be supported by serious argument. Even if it could be, the fact can not be lost sight of that its plain provision is that "every such judge shall reside in the district for which he is appointed."

It will not be disputed that Judge Swayne was so residing in the district for which he was appointed at the time that subsequent legislation excluded the place of his residence from such district. Certainly nothing more can be put forward by those who assert the validity of section 551 than the contention that it was respondent's duty to remove, within a reasonable time, from the district for which he was appointed into the new one for which he was not appointed. It follows, therefore, that the accusation now made amounts to nothing more than the charge that respondent did not act with sufficient alacrity; that he did not

remove his residence into the new district with sufficient promptness. How could such laches possibly constitute an impeachable high crime and misdemeanor?

XVII. TWO UNSOUND CONTENTIONS.

When sitting as a high court of impeachment the Senate is the sole and final judge of the meaning of the phrase "high crimes and misdemeanors." It has been well said that "'Treason, bribery, and other high crimes and misdemeanors' are of course impeachable. Treason and bribery are specifically named. But 'other high crimes and misdemeanors' are just as fully comprehended as though each was specified. The Senate is made the *sole judge* of what they are. There is no revising court. The Senate determines in the light of parliamentary law. Congress can not define or limit by law that which the Constitution defines in two cases by enumeration and in others by classification, and of which the Senate is sole judge." (Lawrence, Johnson's Imp., Vol. I, p. 136.) And yet the Senate sitting as a court of impeachment has in no one of the seven cases tried before it ever attempted to define the momentous phrase in question, and probably never will.

When a new case arises nothing can be learned except what may be gleaned from the individual utterances of Senators, and from the arguments of counsel made in preceding cases, too often under the temptation to bend the precedents to the necessities of the particular occasion. One good result has, however, been the outcome of such discussions, and that is the elimination of two propositions which have perished through their own inherent weakness. On the one hand, a grotesque attempt has been made to narrow unreasonably the jurisdiction of the Senate sitting as a court of impeachment by the claim that the power of impeachment is limited to offences positively defined by the statutes of the United States as impeachable crimes and misdemeanors.

Apart from its other infirmities, this contention loses sight of the fact that Congress has no power whatever to define a high crime and misdemeanor. On the other hand, an equally untenable attempt has been made to widen unreasonably the jurisdiction of the Senate sitting as a court of impeachment by the claim that, under the general principles of right, it can declare that an impeachable high crime or misdemeanor is one in its nature or consequence subversive of some fundamental or essential principle of government or highly prejudicial to the public interest, and this may consist of a violation of the Constitution, of law, of an official oath, or of duty, by an act committed or omitted, or, without violating a positive law, by the abuse of discretionary powers for improper motives or for an improper purpose.

This expansive and nebulous definition embodies an attempt to clothe the Senate sitting as a court with such a jurisdiction as it would have possessed had the Federal Convention seen fit to extend impeachment "to malpractice and neglect of duty," or to "maladministration," a proposition rejected with a single dissent because, as Madison expressed it, "So vague a term will be equivalent to a tenure during the pleasure of the Senate."

Even that school which gives the widest possible interpretation to the Federal Constitution will hardly be willing to go so far, even under

the general-welfare clause, as to write into the Constitution phrases and meanings which the framers expressly rejected, in order to accomplish what may be considered by some a convenient end. Certainly that school which still respects the canons of strict construction can not listen to such an argument.

Between the two extremes, those who have made a careful study of the subject find no difficulty in reaching the obvious conclusion that the term "high crimes and misdemeanors" embraces simply those offenses impeachable under the parliamentary law of England in 1787, subject to such modifications as that law suffered in the process of reproduction. When the objection is made that the phrase thus construed covers too narrow an area, the answer is that it was the expressly declared purpose of the framers so to restrict it within narrow limits perfectly understood at the time. In the first place, the proposition to adopt removal by address was rejected with only one dissent; in the second, the proposal to adopt such a comprehensive term as "maladministration" was rejected and the limited phrase in question substituted. The declaration was clearly made at the time that there must be no undue weakening of the independence of the Federal judiciary. The necessity for such a precaution was soon justified by events.

A leading authority upon the subject tells us that upon the destruction of the Federalist party on the election of Jefferson "An assault upon the judiciary, State and Federal, was made all along the lines. In some States, as New Hampshire, old courts were abolished and new ones with similar jurisdiction created for the sole purpose of obtaining new judges. In Pennsylvania an obnoxious Federal judge was removed from the common pleas by impeachment; and an impeachment of all the Federal judges of the highest court was made, but failed through the uprising of the entire bar, irrespective of party lines, in defense of their official chiefs. A similar attack was made upon the Federal judiciary." (Foster on the Constitution, Vol. I, p. 531.)

With the possibility of such an assault impending it is not strange that the makers of our Federal Constitution should have confined the power of removing judges by impeachment within the well-known limits which the English constitution had defined.

The pleas to the jurisdiction interposed in behalf of respondent to articles 1, 2, 3, 4, 5, 6, and 7 should be sustained, because the facts set forth in said articles, even if true, do not constitute "high crimes and misdemeanors" as defined in Article II, section 4, of the Constitution of the United States.

ANTHONY HIGGINS,
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Counsel for Respondent.

APPENDIX.

The Constitution of the United States and the State constitutions—Impeachment provisions.

UNITED STATES CONSTITUTION.

Article II, section 4:

The President, Vice-President, and all civil officers of the United States shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

Article I, section 3:

Judgment in cases of impeachment shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the United States, but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law.

THE THIRTEEN ORIGINAL STATES.

NEW HAMPSHIRE.

Constitution of 1784, article 1, part 2:

The senate shall be a court with full power and authority to hear and determine all impeachments made by the house of representatives against any officer or officers of the State for misconduct or maladministration in their offices. But previous to the trial of any such impeachment the member of the senate shall respectively be sworn truly and impartially to try and determine the charge in question according to evidence. Their judgment, however, shall not extend further than removal from office, disqualification to hold or enjoy any place of honor, trust, or profit under the State; but the party so convicted shall nevertheless be liable to indictment, trial, judgment, and punishment according to laws of the land. (Charters and Constitutions, Ben: Perley Poore, 1286.)

Judiciary power:

All judicial officers duly appointed, commissioned, and sworn shall hold their offices during good behavior, excepting those concerning whom there is a different provision made in this constitution: *Provided, nevertheless*, The president, with consent of counsel, may remove them upon the address of both houses of the legislature. (Charters and Constitutions, 1290.)

MASSACHUSETTS.

Constitution of 1780, Chapter I, section 2:

ART. VIII. The senate shall be a court with full authority to hear and determine all impeachments made by the house of representatives against any officer or officers of the Commonwealth for misconduct and maladministration in their offices; but previous to the trial of every impeachment the members of the senate shall respectively be sworn truly and impartially to try and determine the charge in question according to evidence. Their judgment, however, shall not extend further than to removal from office and disqualification to hold or enjoy any place of honor, trust, or profit under this Commonwealth; but the party so convicted shall be, nevertheless, liable to indictment, trial, judgment, and punishment according to the laws of the land. (Charters and Constitutions, 963.)

Chapter III, "Judiciary power:"

ARTICLE I. * * * All judicial officers, duly appointed, commissioned, and sworn, shall hold their offices during good behavior, excepting such concerning whom there is different provision made in this constitution: *Provided, nevertheless*, The governor, with consent of the council, may remove them upon the address of both houses of the legislature. (Charters and Constitutions, 968.)

RHODE ISLAND.

Constitution of 1842, Article X:

SEC. 4. The judges of the supreme court shall be elected by the two houses in grand committee. Each judge shall hold his office until his place shall be declared vacant by a resolution of the general assembly to that effect; which resolution shall be voted for by a majority of all members elected to the house in which it may originate, and be concurred in by the same majority of the other house. Such resolution shall not be entertained at any other than the annual session for the election of public officers; and in default of the passage thereof at said session the judge shall hold his place as is herein provided. But a judge of any court shall be removed from office if, upon impeachment, he shall be found guilty of any official misdemeanor. (Charters and Constitutions, 1611, 1612.)

Constitution of 1842, Article XI:

SEC. 3. The governor and all other executive and judicial officers shall be liable to impeachment, but judgment in such cases shall not extend further than to removal from office. The person convicted shall, nevertheless, be liable to indictment, trial, and punishment according to law. (Page 1612.)

CONNECTICUT.

Constitution of 1818, Article V:

Sec. 3. * * * The judges of the supreme court and of the superior court shall hold their offices during good behavior, but may be removed by impeachment, and the governor shall also remove them on the address of two-thirds of the members of each house of the general assembly. (Page 263.)

Article IX:

Sec. 3. The governor and all other executive and judicial officers shall be liable to impeachment, but judgment in such cases shall not extend further than to removal from office and disqualifications to hold any office of honor, trust, or profit under this State. The party convicted shall, nevertheless, be liable and subject to indictment, trial, and punishment according to law. (Page 265.)

NEW YORK.

Constitution of 1777, Paragraph XXXII:

And this convention doth further, in the name and by the authority of the good people of this State, ordain, determine, and declare that a court shall be instituted for the trial of impeachments and the correction of errors, under the regulations, which shall be established by the legislature. (Page 1337.)

Chapter XXXIII:

That the power of impeaching all officers of the State for mal and corrupt conduct in their respective offices be vested in the representatives of the people in assembly; but that it shall always be necessary that two-third parts of the members present shall consent to and agree in such impeachment. That previous to the trial of every impeachment the members of the said court shall, respectively, be sworn truly and impartially to try and determine the charge in question according to evidence and that no judgment of the said court shall be valid unless it be assented to by two-third parts of the members then present; nor shall it extend further than to removal from office and disqualification to hold or enjoy any place of honor, trust, or profit under this State. But the party so convicted shall be, nevertheless, liable and subject to indictment, trial, judgment, and punishment according to the laws of the land. (Page 1337.)

Chapter XXXIV:

And it is further ordained, That in every trial on impeachment, or indictment for crimes or misdemeanors, the party impeached or indicted shall be allowed counsel, as in civil actions. (Page 1337.)

Constitution of 1821, Article V:

Sec. 1. The court for the trial of impeachments, and the correction of errors, shall consist of the president of the senate, the senators, the chancellor, and the justices of the supreme court, or the major part of them. (Page 1346.)

Sec. 2. The assembly shall have the power of impeaching all civil officers of this State for mal and corrupt conduct in office, and for high crimes and misdemeanors; but a majority of all the members elected shall concur in an impeachment.

No person shall be convicted without the concurrence of two-thirds of the members present. Judgment, in case of impeachment, shall not extend further than the removal from office and the disqualification to hold and enjoy any office of honor, trust, or profit under this State, but the party convicted shall be liable to indictment and punishment according to law.

Constitution of 1846, Article VI:

Sec. 1. The assembly shall have the power of impeachment by the vote of the majority of all the members elected. The court for the trial of impeachments shall be composed of the president of the senate, the senators, or a major part of them, and the judges of the court of appeals, or the major part of them. * * * No person shall be convicted without the concurrence of two-thirds of the members present. Judgment in cases of impeachment shall not extend further than to removal from office, or removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under this State; but the party impeached shall be liable to indictment and punishment according to law. (Page 1358.)

Sec. XI. Justices of the supreme court and judges of the court of appeals may be removed by concurrent resolution of both houses of the legislature, if two-thirds of all the members elected to the assembly and a majority of all the members elected to the senate concur therein. All judicial officers, except those mentioned in this section, and except justices of the peace and the judges and justices of inferior courts not of record, may be removed by the senate on the recommendation of the governor, but no removals shall be made by virtue of this section unless the cause thereof be entered on the journals, nor unless the party complained of shall have been served

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with a copy of the complaint against him and shall have had an opportunity of being heard in his defense. On the question of removal the ayes and noes shall be entered on the journal. (Page 1359.)

Article VI:

Amendments to constitution of 1846. (Page 1368.)

Sec. 1. [Same as section 1 of constitution of 1846.] (Page 1358.)

NEW JERSEY.

Constitution of 1776, Paragraph XII:

Provided always, That the said officers, severally, shall be capable of being reappointed, at the end of the terms severally before limited; and that any of the said officers shall be liable to be dismissed, when adjudged guilty of misbehavior, by the council, on an impeachment of the assembly. (Page 1312.)

Constitution of 1844, Article VI, "Judiciary:"

Sec. 3. The house of assembly shall have the sole power of impeaching, by a vote of a majority of all the members; and all impeachments shall be tried by the senate; the members when sitting for that purpose to be on oath or affirmation "truly and impartially to try and determine the charge in question according to evidence;" and no person shall be convicted without the concurrence of two-thirds of all the members of the senate.

2. Any judicial officer impeached shall be suspended from exercising his office until his acquittal.

3. Judgment, in cases of impeachment, shall not extend further than to removal from office and to disqualification to hold and enjoy any office of honor, profit, or trust under this State; but the party convicted shall nevertheless be liable to indictment, trial, and punishment according to law. (Pages 1320-1321.)

PENNSYLVANIA.

Constitution of 1776:

Sec. 20. The president, and in his absence the vice-president, with the council, five of whom shall be a quorum, shall have power to appoint and commissionate judges, * * *

Sec. 22. Every officer of State, whether judicial or executive, shall be liable to be impeached by the general assembly, either when in office or after his resignation or removal for maladministration. All impeachments shall be before the president or vice-president and council, who shall hear and determine the same.

Sec. 23. The judges of the supreme court of judicature shall have fixed salaries, be commissioned for seven years only, though capable of reappointment at the end of that term, but removable for misbehavior at any time by the general assembly; * * *. (Page 1545.)

Constitution of 1790, Article IV:

Sec. 3. The governor, and all other civil officers under this Commonwealth, shall be liable to impeachment for any misdemeanor in office. But judgment in such cases shall not extend further than to removal from office and disqualification to hold any office of honor, trust, or profit under this Commonwealth. The party, whether convicted or acquitted, shall nevertheless be liable to indictment, trial, judgment, and punishment according to law. (Page 1552.)

Article V:

Sec. 2. The judges of the supreme court and of the several courts of common pleas shall hold their offices during good behavior. BUT FOR ANY REASONABLE CAUSE, WHICH SHALL NOT BE SUFFICIENT GROUND OF IMPEACHMENT, the governor may remove any of them on the address of two-thirds of each branch of the legislature.

Constitution of 1838, Article IV:

Sec. 3. The governor and all other civil officers under this Commonwealth shall be liable to impeachment for any misdemeanor in office, but judgment in such cases shall not extend further than to removal from office and disqualification to hold any office of honor, trust, or profit under the Commonwealth. The party, whether convicted or acquitted, shall, nevertheless, be liable to indictment, trial, judgment, and punishment according to law. (Page 1561.)

Article V:

Sec. 2. The judges of the supreme court shall hold their offices for the term of fifteen years, if they shall so long behave themselves well. The president judges of the several courts of common pleas, and of such other courts of record as are or shall be established by law, and all other judges required to be learned in the law, shall hold their offices for the term of ten years, if they shall so long behave themselves

well. The associate judges of the courts of common pleas shall hold their offices for the term of five years, if they shall so long behave themselves well. BUT FOR ANY REASONABLE CAUSE, WHICH SHALL NOT BE SUFFICIENT GROUND OF IMPEACHMENT, the governor may remove any of them on the address of two-thirds of each branch of the legislature.

Amendments to Pennsylvania constitution of 1838, Article V:

SEC. 2. The judges of the supreme court shall hold their offices for the term of fifteen years, if they shall so long behave themselves well, * * * all of whom shall be commissioned by the governor, BUT FOR ANY REASONABLE CAUSE, WHICH SHALL NOT BE SUFFICIENT GROUNDS OF IMPEACHMENT, the governor shall remove any of them on the address of two-thirds of each branch of the legislature. (Page 1568.)

Article VI:

SEC. 3. The governor and all other civil officers shall be liable to impeachment for any misdemeanor in office, but judgment in such cases shall not extend further than to removal from office and disqualification to hold any office of trust or profit under this Commonwealth; the person accused, whether convicted or acquitted, shall nevertheless be liable to indictment, trial, judgment, and punishment according to law.

SEC. 4. All officers shall hold their offices on the condition that they behave themselves well while in office, and shall be removed on conviction of misbehavior in office or of any infamous crime. Appointed officers, other than judges of the courts of record and the superintendent of public instruction, may be removed at the pleasure of the power by which they shall have been appointed. All officers elected by the people, except governor, lieutenant-governor, members of the general assembly, and judges of the courts of record learned in the law, shall be removed by the governor for reasonable cause, after due notice and full hearing, on the address of two-thirds of the senate. (Page 1582.)

DELAWARE.

Constitution of 1776:

ART. 23. * * * And all officers shall be removed on conviction of misbehavior at common law, or on impeachment, or upon the address of the general assembly. (Page 277.)

Constitution of 1792, Article V:

SEC. 2. The governor, and all other civil officers under this State, shall be liable to impeachment for treason, bribery, or any high crime or misdemeanor in office. Judgment in such cases shall not extend further than to removal from office, and disqualification to hold any office of honor, trust, or profit under this State; but the party convicted shall nevertheless be subject to indictment, trial, judgment, and punishment according to law. (Page 283.)

Article VI:

SEC. 2. The chancellor and the judges of the supreme court of common pleas shall hold their offices during good behavior; but FOR ANY REASONABLE CAUSE WHICH SHALL NOT BE A SUFFICIENT GROUND FOR AN IMPEACHMENT the governor may, in his discretion, remove any of them on the address of two-thirds of all the members of each branch of the legislature.

Constitution of 1831, Article V:

SEC. 2. (Page 294.) [Same as section 2, Article V, of constitution of 1792, p. 293.]

Article VI:

SEC. 14. The governor may, for any reasonable cause, in his discretion, remove any of them on the address of two-thirds of all the members of each branch of the general assembly. In all cases where the legislature shall so address the governor the cause of removal shall be entered on the journals of each house. The judge against whom the legislature may be about to proceed shall receive notice thereof, accompanied with the causes alleged for his removal, at least five days before the day on which either house of the general assembly shall act thereupon. (Page 297.)

MARYLAND.

Constitution of 1851, Article IV, "Judiciary department:"

SEC. 4. Subject to removal for incompetency, willful neglect of duty, or misbehavior in office, on conviction in a court of law, or by the governor upon the address of the general assembly, two-thirds of the members of each house concurring in such address. (Pages 848-849.)

Constitution of 1864, Article IV, "Judiciary department," part 1:

SEC. 4. Any judge shall be removed from office by the governor on conviction, in a court of law, of incompetency, of willful neglect of duty, of misbehavior in office, or any other crime; or on impeachment according to this constitution, or the laws

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of the State; or on the address of the general assembly, two-thirds of each house concurring in such address, and the accused having been notified of the charges against him and had opportunity of making his defense. (Page 873.)

Constitution of 1867, article 14, "Judiciary department," part 1:

SEC. 4. (Page 902.) [Same as section 4 of constitution of 1864, set out above.]

VIRGINIA.

Constitution of 1776:

The governor, when he is out of office, and others offending against the State, either by maladministration, corruption, or other means, by which the safety of the State may be endangered, shall be impeachable by the house of delegates, such impeachment to be prosecuted by the attorney-general or such other person or persons as the house may appoint in the general court according to the laws of the land. If found guilty he or they shall be either forever disabled to hold any office under government or be removed from such office pro tempore, or subjected to such pains or penalties as the laws shall direct.

If all, or any of the judges of the general court should on grounds (to be judged of by the house of delegates) be accused of any of the crimes or offenses above mentioned, such house of delegates may, in like manner, impeach the judge or judges so accused, to be prosecuted in the court of appeals, and he or they, if found guilty, shall be punished in the same manner as is prescribed in the preceding clause. (Page 1912.)

Constitution of 1830, Article III:

SEC. 13. The governor, the judges of the court of appeals and superior court, and all others offending against the State either by maladministration, corruption, neglect of duty, or any other high crime or misdemeanor, shall be impeachable by the house of delegates, such impeachment to be prosecuted before the senate, which shall have the sole power to try all impeachments. When sitting for that purpose, the senate shall be on oath or affirmation, and no person shall be convicted without the concurrence of two-thirds of the members present. Judgment, in cases of impeachment, shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the Commonwealth; but the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment, and punishment according to law. (Page 1917.)

Article V:

SEC. 2. No law abolishing any court shall be construed to deprive a judge thereof of his office unless two-thirds of the members of each house present concur in the passing thereof; but the legislature may assign other judicial duties to the judges of courts abolished by any law enacted by less than two-thirds of the members of each house present. (Page 1918.)

Constitution of 1830, Article V:

SEC. 4. The judges of the supreme court of appeals and of the superior courts shall be elected by the joint vote of both houses of the general assembly. (Page 1919.)

SEC. 6. Judges may be removed from office by a concurrent vote of both houses of the general assembly; but two-thirds of the members present must concur in such vote, and the cause of removal shall be entered on the journals of each. The judge against whom the legislature may be about to proceed shall receive notice thereof, accompanied with a copy of the causes alleged for his removal, at least twenty days before the day on which either house of the general assembly shall act thereupon.

Constitution of 1850, Article IV:

SEC. 18. The governor, lieutenant-governor, judges, and all others offending against the State by maladministration, corruption, neglect of duty, or other high crime or misdemeanor shall be impeachable by the house of delegates and be prosecuted before the senate, which shall have the sole power to try impeachments. When sitting for that purpose they shall be on oath or affirmation, and no person shall be convicted without the concurrence of two-thirds of the members present. Judgment, in cases of impeachment, shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the Commonwealth; but the party convicted shall nevertheless be subject to indictment, trial, judgment, and punishment according to law. The senate may sit during the recess of the general assembly for the trial of impeachments. (Page 1928.)

Article VI:

SEC. 17. Judges may be removed from office by a concurrent vote of both houses of the general assembly, but a majority of all the members elected to each house must concur in such vote, and the cause of removal shall be entered on the journal of each house. The judge against whom the general assembly may be about to proceed shall

receive notice thereof, accompanied by a copy of the causes alleged for his removal, at least twenty days before the day on which either house of the general assembly shall act thereupon. (Page 1934.)

Constitution, 1864, Article IV:

Sec. 18. (Page 1943.) [Same as section 18, constitution of 1850, Article IV, page 1928.]

Article VI:

Sec. 16. (Page 1949.) [Same as section 17, constitution of 1850, Article VI, page 1934.]

Constitution of 1870, Article V:

Sec. 16. (Page 1962.) [Same as section 18, constitution of 1850, Article IV, page 1928.]

Constitution of 1870, Article VI:

Sec. 23. Judges shall be removed from office by a concurrent vote of both houses of the general assembly, but a majority of all the members elected to each house must concur in such vote, and the cause of removal shall be entered on the journal of each house. The judge against whom the general assembly may be about to proceed shall have notice thereof, accompanied by a copy of the causes alleged for his removal, at least twenty days before the day on which either house of the general assembly shall act thereon. (Page 1966.)

NORTH CAROLINA.

Constitution of 1776:

XIII. That the general assembly shall, by joint ballot of both houses, appoint judges of the supreme courts of law and equity, judges of admiralty, and attorney-general, who shall be commissioned by the governor, and hold offices during good behavior.

XXIII. That the governor and other officers offending against the State by violating any part of this constitution, maladministration, or corruption may be prosecuted, on the impeachment of the general assembly or presentment of the grand jury of any court of supreme jurisdiction in this State. (Page 1412.)

Amendments to constitution of 1776, ratified in 1835, Article III:

Sec. 1. The governor, judges of the supreme court, and judges of the superior courts, and all other officers of this State (except justices of the police and militia officers), may be impeached for willfully violating any article of the constitution, maladministration, or corruption.

Judgment in cases of impeachment shall not extend further than to remove from office and disqualification to hold and enjoy any office of honor, trust, or profit under this State; but the party convicted may nevertheless be liable to indictment, trial, judgment, and punishment according to law. (Page 1417.)

Sec. 3. Upon the conviction of any justice of the peace of any infamous crime, or of corruption and malpractice in office, the commission of such justice shall be thereby vacated, and he shall be forever disqualified from holding such appointment.

Constitution of 1868, Article IV:

Sec. 4. The judicial power of the State shall be vested in the court for the trial of impeachments, a supreme court, a superior court, courts of justices of the peace, and especial courts. (Page 1426.)

Sec. 5. The court for the trial of impeachments shall be the senate. A majority of the members shall be necessary to a quorum, and the judgment shall not extend beyond removal and disqualification to hold office in this State, but the party shall be liable to indictment and punishment according to law.

Sec. 6. The house of representatives solely shall have the power of impeaching. No person shall be convicted without the concurrence of two-thirds of the senators present. When the governor is impeached the chief justice shall preside.

Amended constitution of 1876, Article I:

Sec. 2. (Page 1442.) [Same as section 4, constitution of 1868, page 1426, except last line, which says "and such other courts inferior to the supreme court as may be established by law."]

Sections 3 and 4, same as sections 5 and 6 of constitution of 1868, page 1426.

Constitution of 1876, Article IV:

Sec. 31. Any judge of the supreme court, or of the superior courts, and the presiding officers of such courts inferior to the supreme court as may be established by law, may be removed from office for mental or physical inability, upon a concurrent resolution of two-thirds of both houses of the general assembly. The judge or presiding officer against whom the general assembly may be about to proceed shall receive notice thereof, accompanied by a copy of the causes alleged for his removal, at least twenty days before the day on which either house of the general assembly shall act thereon. (Page 1444.)

SOUTH CAROLINA.

Constitution of 1776, Paragraph XX:

That all other judicial officers shall be chosen by ballot, jointly by the general assembly and legislative council, and, except the judges of the court of chancery, commissioned by the President and Commander in Chief during good behavior, but shall be removed on address of the general assembly and legislative council. (Page 1619.)

Constitution of 1778, Paragraph XXIII:

That the form of impeaching all officers of the State for mal and corrupt conduct in their respective offices, not amenable to any other jurisdiction, be vested in the house of representatives. But that it shall always be necessary that two-thirds part of the members present do consent to and agree in such impeachment. That the senators, and such of the judges of this State as are not members of the house of representatives, be a court for the trial of impeachments under such regulations as the legislature shall establish, and that previous to the trial of every impeachment the members of the said court shall respectively be sworn truly and impartially to try and determine the charge in question according to evidence, and no judgment of the said court, except judgment of acquittal, shall be valid unless it shall be assented to by two-thirds part of the members then present, and on every trial, as well on impeachments as on others, the party accused shall be allowed counsel. (Page 1624.)

Paragraph VII:

That all other judicial officers shall be chosen by ballot, jointly by the senate and house of representatives, and, except the judges of the court of chancery, commissioned by the governor and commander in chief during good behavior, but shall be removed on address of the senate and house of representatives.

Constitution of 1790, Article III:

SEC. 1. The judicial power shall be vested in such superior and inferior courts of law and equity as the legislature shall from time to time direct and establish. The judges of each shall hold their commissions during good behavior. (Page 1631.)

Article V:

SEC. 1. The house of representatives shall have the sole power of impeaching, but no impeachment shall be made unless with the concurrence of two-thirds of the house of representatives. (Page 1632.)

SEC. 2. All impeachments shall be tried by the senate. When sitting for that purpose the senators shall be on oath or affirmation, and no person shall be convicted without the concurrence of two-thirds of the members present.

SEC. 3. The governor, lieutenant-governor, and all the civil officers shall be liable to impeachment for any misbehavior in office; but judgment in such cases shall not extend further than to a removal from office and a disqualification to hold any office of honor, trust, or profit under this State. The party convicted shall, nevertheless, be liable to indictment, trial, judgment, and punishment according to law.

Article VI:

SEC. 1. The judges of the superior courts shall be elected by the joint ballot of both houses in the house of representatives.

Constitution of 1828; ratified, 1828.

That the third section of the fifth article of the constitution of this State shall be altered to read as follows, viz:

"SEC. 3. The governor, lieutenant-governor, and all civil officers shall be liable to impeachment for high crimes and misdemeanors, for any misbehavior in office, for corruption in procuring office, or for any act which shall degrade their official character. But judgment in such cases shall not extend further than to removal from office and disqualification to hold any office of honor, trust, or profit under this State. The party convicted shall, nevertheless, be liable to indictment, trial, judgment, and punishment according to law." (Page 1636.)

SEC. 4. All civil officers whose authority is limited to a single election district, a single judicial district, or part of either, shall be appointed, hold their office, be removed from office, and in addition to liability to impeachment may be punished for official misconduct in such manner as the legislature previous to their appointment may provide.

SEC. 5. If any civil officer shall become disabled from discharging the duties of his office by reason of any permanent bodily or mental infirmity, his office may be declared to be vacant by a joint resolution, agreed to by two-thirds of the whole representation in each branch of the legislature: *Provided*, That such resolution shall contain the grounds for the proposed removal, and before it shall pass either house a copy of it shall be served on the officer and a hearing be allowed him.

Constitution of 1865, Article III:

SEC. 1. The judicial power shall be vested in such superior and inferior courts of law and equity as the general assembly shall from time to time direct and establish. The judges of the superior courts shall be elected by the general assembly; shall hold their offices during good behavior. (Pages 1641-1642.)

Article VI:

SEC. 2. [Same as section 2, of constitution of 1790, p. 1632.]

SEC. 3. [Same as section 3, constitution of 1828, p. 1636.]

SEC. 4. [Same as section 4, constitution of 1828, p. 1636, except in two last lines, which read "as the general assembly previous to their appointment may provide."]

SEC. 5. [Page 1462.] [Same as section 5, constitution of 1828, p. 1636.]

Constitution of 1868, Article IV, "Judicial department:"

SEC. 2. The supreme court shall consist of a chief justice and two associate justices, any two of whom shall constitute a quorum. They shall be elected by a joint vote of the general assembly for the term of six years. [Page 1654.]

Article VII, "Impeachments:"

SEC. 3. The governor and all other executive and judicial officers shall be liable to impeachment, but judgment in such case shall not extend further than removal from office. The persons convicted shall, nevertheless, be liable to indictment, trial, and punishment according to law. (Pages 1657-1658.)

SEC. 4. For any wilful neglect of duty OR OTHER REASONABLE CAUSE, WHICH SHALL NOT BE SUFFICIENT GROUND OF IMPEACHMENT, THE GOVERNOR shall remove any executive or judicial officer on the address of two-thirds of each house of the general assembly: *Provided*, That the cause or causes for which said removal may be required shall be stated at length in such address and entered on the journals of each house: *And provided further*, That the officer intended to be removed shall be notified of such cause or causes and shall be admitted to a hearing in his own defense before any vote for such address, and in all cases the votes shall be taken by yeas and nays and be entered on the journals of each house, respectively.

GEORGIA.

Constitution of 1798, Article III:

SECTION 1. The judges of the superior court shall be elected for the term of three years, removable by the governor on the address of two-thirds of both houses for that purpose, or by impeachment and conviction thereon. (Page 393.)

SEC. 4. Justices of the inferior courts shall be appointed by the general assembly and be commissioned by the governor, and shall hold their commissions during good behavior or as long as they respectively reside in the county for which they shall be appointed, unless removed by sentence on impeachment, or by the governor on the address of two-thirds of each branch of the general assembly.

Constitution of 1835, Article III:

SECTION 1. The supreme court shall consist of three judges, who shall be elected by the legislature for such term of years as shall be prescribed by law, and shall continue in office until their successors shall be elected and qualified; removable by the governor on the address of two-thirds of both branches of the general assembly for that purpose, or by impeachment and conviction thereon. * * * The judges of the superior court shall be elected for the term of four years, and shall continue in office until their successors shall be elected and qualified; removable by the governor on the address of two-thirds of both branches of the general assembly for that purpose, or by impeachment and conviction thereon. (Page 399.)

Constitution of 1865, Article IV:

SECTION 1. The supreme court shall consist of three judges, who shall be elected by the general assembly for such term of years, not less than six, as shall be prescribed by law, and shall continue in office until their successors shall be elected and qualified; removable by the governor on the address of two-thirds of each branch of the general assembly or by impeachment and conviction thereon. (Pp. 408-409.)

SEC. 2. The judges of the superior courts removable by the governor on the address of two-thirds of each branch of the general assembly or by impeachment and conviction thereon.

Constitution of 1868, Article III:

SEC. 2. The senate shall have the sole power to try impeachments. When sitting for that purpose the members shall be on oath or affirmation, and shall be presided over by one of the judges of the supreme court, selected for that purpose by a viva voce vote of the senate; and no person shall be convicted without the concurrence of two-thirds of the members present. Judgments in cases of impeachments shall not extend further than removals from office and disqualification to hold and enjoy any office of honor, trust, or profit within this State; but the party convicted shall, never-

theless, be liable and subject to indictment, trial, judgment, and punishment according to law. (P. 416.)

Constitution of 1868, Article V:

Sec. 9. The judges of the supreme and superior court, the attorney-general, solicitors-general, and the district judges and attorneys shall be appointed by the governor, with the advice and consent of the senate, and shall be removable by the governor on the address of two-thirds of each branch of the general assembly, or by impeachment and conviction thereon. (Page 421.)

STATES ADMITTED AFTER THE ORIGINAL THIRTEEN.

ALABAMA.

Constitution of 1819, Article V, "Judiciary department:"

Sec. 12. Chancellors, judges of the supreme court (judges of the circuit courts and judges of the inferior courts), shall be elected by joint vote of both houses of the general assembly. (Page 40.)

Sec. 13. The judges of the several courts in this State shall hold their offices during good behavior; and for willful neglect of duty, or other reasonable cause, WHICH SHALL NOT BE SUFFICIENT GROUND FOR IMPEACHMENT, the governor shall remove any of them, on the address of two-thirds of each house of the general assembly: *Provided, however,* That the cause or causes for which such removal shall be required shall be stated at length in such address and entered on the journal of each house: *And provided further,* That the cause or causes shall be notified to the judge so intended to be removed, and he shall be admitted to a hearing in his own defense, before any vote for such address shall pass; and in all such cases the vote shall be taken by yeas and nays and entered on the journals of each house, respectively.

IMPEACHMENTS.—SEC. 3. The governor and all civil officers shall be liable to impeachment for any misdemeanor in office, but judgment in such cases shall not extend further than removal from office and to disqualification to hold any office of honor, trust, or profit under the State; but the party convicted shall, nevertheless, be liable and subject to indictment, trial, and punishment according to law.

Constitution of 1865, Article VI, "Judicial department:"

* * * for any willful neglect of duty, or any other reasonable cause, which shall not be a sufficient ground of impeachment, the governor shall remove any judge on the address of two-thirds of each house of the general assembly: *Provided,* That the cause or causes for which said removal may be required shall be stated at length in such address and entered on the journals of each house: *And provided further,* That the judge intended to be removed shall be notified of such cause or causes, and shall be admitted to a hearing in his own defense, before any vote for such address; and in all such cases the vote shall be taken by yeas and nays and be entered on the journals of each house, respectively. (Page 58.)

Article VII:

Sec. 7. All civil officers of the State, whether elected by the people or by the general assembly or appointed by the governor, shall be liable to impeachment for any misdemeanor in office; but judgment in such cases shall not extend further than removal from office and disqualification to hold any office of honor, trust, or profit under the State; but the party convicted shall, nevertheless, be liable and subject to indictment, trial, and punishment according to law. (Page 59.)

Constitution of 1867, Article IV:

Sec. 23. All State officers may be impeached for any misdemeanor in office, but judgment shall not extend further than removal from office and disqualification to hold office under the authority of this State. The party impeached, whether convicted or no, shall be liable to indictment, trial, and judgment according to law. (Page 65.)

Constitution of 1867, Article VI:

Sec. 12. * * * For any willful neglect of duty, or any other reasonable cause WHICH SHALL NOT BE A SUFFICIENT GROUND OF IMPEACHMENT, the governor shall remove any judge on the address of two-thirds of each house of the general assembly: *Provided,* That the cause or causes for which said removal may be required shall be stated at length in such address and entered on the journals of each house: *And provided further,* That the judge intended to be removed shall be notified of such cause or causes, and shall be admitted to a hearing in his own defense before any vote for such address; and in all such cases the vote shall be taken by yeas and nays and be entered on the journal of each house, respectively. (Page 68.)

Constitution of 1875, Article VII, "Impeachment:"

Sec. 1. The governor, secretary of state, auditor, treasurer, attorney-general, super-

intendent of education, and judges of the supreme court may be removed from office for willful neglect of duty, corruption in office, habitual drunkenness, incompetency, or any offense involving moral turpitude while in office, or committed under color thereof or connected therewith, by the senate sitting as a court for that purpose, under oath or affirmation, on articles or charges preferred by the house of representatives. (Page 89.)

SEC. 2. The chancellors, judges of the circuit courts, judges of the probate courts, solicitors of the circuits, and judges of inferior courts from which an appeal may be taken directly to the supreme court, may be removed from office for any of the causes specified in the preceding section, by the supreme court, under such regulations as may be prescribed by law.

ARKANSAS.

Constitution of 1836, Article IV:

SEC. 26. The governor, secretary of state, auditor, treasurer, and all the judges of the supreme, circuit, and inferior courts of law and equity, and the prosecuting attorneys for the State shall be liable to impeachment for any malpractice or misdemeanor in office; but judgment in such cases shall not extend further than removal from office and disqualification to hold any office of honor, trust, or profit under this State. The party impeached, whether convicted or acquitted, shall nevertheless be liable to be indicted, tried, and punished according to law. (Page 106.)

SEC. 27. * * * and for reasonable causes, WHICH SHALL NOT BE SUFFICIENT GROUND OF IMPEACHMENT, the governor shall, on the joint address of two-thirds of each branch of a legislature, remove from office the judges of the supreme and inferior courts: *Provided*, The cause or causes of removal be spread on the journals and the party charged be notified of the same and heard by himself and counsel before the vote is finally taken and decided.

Constitution of 1864, Article IV:

SEC. 24. (Page 125.) [Same as section 26, constitution of 1836, p. 106.]

SEC. 25. [Same as section 27, same constitution, p. 106.]

Constitution of 1868, Article VII:

SEC. 2. (Page 143.) The governor and all other civil officers under this State, etc. [Same as section 3, constitution Alabama, 1819, p. 40.]

Constitution of 1874, Article XV:

SEC. 1. The governor, and all State officers, judges of the supreme and circuit courts, chancellors, and prosecuting attorneys shall be liable to impeachment for high crimes and misdemeanors and gross misconduct in office, but the judgment shall go no further than removal from office and disqualification to hold any office of honor, trust, or profit under this State. An impeachment, whether successful or not, shall be no bar to an indictment.

SEC. 3. The governor, upon the joint address of two-thirds of all the members elected to each house of the general assembly, for good cause may remove the auditor, treasurer, secretary of state, attorney-general, judges of the supreme and circuit courts, chancellors, and prosecuting attorneys. (Page 174.)

CALIFORNIA.

Constitution of 1849, Article IV:

SEC. 19. The governor, lieutenant-governor, secretary of state, comptroller, treasurer, attorney-general, surveyor-general, justices of the supreme court, and judges of the district courts shall be liable to impeachment for any misdemeanor in office; but judgment in such cases shall extend only to removal from office and disqualification to hold any office of honor, trust, or profit under the State; but the party convicted or acquitted shall nevertheless be liable to indictment, trial, and punishment according to law. All other civil officers shall be tried for misdemeanor in office in such manner as the legislature may provide. (Page 198.)

COLORADO.

Constitution of 1876, Article XIII:

SEC. 2. The governor and other State and judicial officers, except county judges and justices of the peace, shall be liable to impeachment for high crimes or misdemeanors or malfeasance in office, but judgment in such cases shall only extend to removal from office and disqualification to hold any office of honor, trust, or profit in the State. The party, whether convicted or acquitted, shall, nevertheless, be liable to prosecution, trial, judgment, and punishment according to law.

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SEC. 3. All officers not liable to impeachment shall be subject to removal for misconduct or malfeasance in office in such manner as may be provided by law. (Page 241.)

FLORIDA.

Constitution of 1838, Article V:

SEC. 12. * * * and at the expiration of five years the justices of the supreme court and the judges of the circuit courts shall be elected for the term of and during their good behavior, and for wilful neglect of duty, or other reasonable cause, WHICH SHALL NOT BE SUFFICIENT GROUND FOR IMPEACHMENT, the governor shall remove any of them on the address of two-thirds of each house of the general assembly: *Provided, however,* That the cause or causes shall be stated at length in such address and entered on the journal of each house: *And provided further,* That the cause or causes shall be notified to the judge so intended to be removed, and he shall be admitted to a hearing in his own defense before any vote for such address shall pass; and in such cases the vote shall be taken by yeas and nays and entered on the journals of each house, respectively. (Page 322.)

Constitution of 1838, Article VI:

SEC. 22. (Page 325.) [Same as section 3, "Impeachments," Alabama constitution of 1819.]

Constitution of 1865, Article V:

SEC. 10. There shall be appointed by the governor, by and with the advice and consent of the senate, a chief justice and two associate justices of the supreme court of this State, who shall reside in this State and hold their office for a term of six years from their appointment and confirmation, unless sooner removed under the provisions of this constitution for the removal of judges by address or impeachment; and for wilful neglect of duty, or other REASONABLE CAUSE, WHICH SHALL NOT BE SUFFICIENT GROUND FOR IMPEACHMENT, the governor shall remove any of them on the address of two-thirds of the general assembly: *Provided, however,* That the cause or causes shall be notified to the judge so intended to be removed, and he shall be admitted to a hearing in his own defense before any vote for such removal shall pass, and in such case the vote shall be taken by yeas and nays and entered on the journal of each house, respectively, and in case of the appointment to fill a vacancy in said offices the person so appointed shall only hold office for the unexpired term of his predecessor. (Page 339.)

Article VI:

SEC. 18. (Page 341.) [Same as section 3, "Impeachments," Alabama constitution of 1819, p. 40.]

Constitution of 1868, Article V:

SEC. 28. The governor, lieutenant-governor, members of the cabinet, justices of the supreme court, and judges of the circuit court shall be liable to impeachment for any misdemeanor in office; but judgment in such cases shall extend only to removal from office and disqualification to hold any office of honor, trust, or profit under the State; but the party convicted or acquitted shall, nevertheless, be liable to indictment, trial, and punishment according to law. All other officers who shall have been appointed to office by the governor, and by and with the consent of the senate, may be removed from office upon the recommendation of the governor and consent of the Senate, but they shall nevertheless be liable to indictment, trial, and punishment according to law for any misdemeanor in office. All other civil officers shall be tried for misdemeanors in office in such manner as the legislature may provide. (Page 351.)

Article XVII:

SEC. 9. In addition to other crimes and misdemeanors for which an officer may be impeached and tried shall be included drunkenness and other dissipations. Incompetency, malfeasance in office, gambling, or any conduct detrimental to good morals shall be considered sufficient cause for impeachment and conviction. Any officer, when impeached by the assembly, shall be deemed under arrest and shall be disqualified from performing any of the duties of his office until acquitted by the Senate. But any officer so impeached and in arrest may demand his trial by the Senate within ten days of the date of his impeachment. (Page 361.)

Constitution of 1868, Article IX:

That the following portion of section 9, Article XVII, of the constitution is hereby abrogated:

"Any officer when impeached by the assembly shall be deemed under arrest and shall be disqualified from performing any of the duties of his office until acquitted by the senate; but any officer so impeached and in arrest may demand his trial by the senate within one year from the date of his impeachment." (Page 365.)

IDAHO.

Constitution of 1889, Article V:

SEC. 3. The court for the trial of impeachments shall be the senate. A majority of the members elected shall be necessary to a quorum, and the judgment shall not extend beyond removal from and disqualification to hold office in this State; but the party shall be liable to indictment and punishment according to law. (Page 469.)

SEC. 4. The house of representatives solely shall have the power of impeachment. No person shall be convicted without the concurrence of two-thirds of the senators elected.

ILLINOIS.

Constitution of 1818, Article II:

SEC. 23. (Page 441.) The governor and all other civil officers under this State, etc. [same as section 3, constitution of Alabama, 1819, page 40].

Article IV:

SEC. 5. The judges of the inferior courts shall hold their offices during good behavior, but for ANY REASONABLE CAUSE WHICH SHALL NOT BE SUFFICIENT GROUND FOR IMPEACHMENT, both the judges of the supreme and inferior courts shall be removed from office on the address of two-thirds of each branch of the general assembly: *Provided always*, That no member of either house of the general assembly nor any person connected with a member by consanguinity or affinity shall be appointed to fill the vacancy occasioned by such removal. (Page 444.)

Constitution of 1848, Article II:

SEC. 28. The governor, and other civil officers under this State, shall be liable to impeachment for any misdemeanor in office; but judgment in such cases shall not exceed further than to removal from office and disqualification to hold office of honor, profit, or trust under this State. The party, whether convicted or acquitted, shall, nevertheless, be liable to indictment, trial, judgment, and punishment according to law. (Page 452.)

Constitution of 1848, Article V:

SEC. 12. For any reasonable cause, to be entered on the journals of each house, WHICH SHALL NOT BE A SUFFICIENT GROUND FOR IMPEACHMENT, both justices of the supreme court and judges of the circuit court shall be removed from office on the vote of two-thirds of the members elected to each branch of the general assembly: *Provided always*, That no member of either house of the general assembly shall be eligible to fill the vacancy occasioned by such removal: *Provided also*, That no removal shall be made unless the justice or judge complained of shall have been served with a copy of the complaint against him and shall have an opportunity of being heard in his defense. (Page 460.)

Constitution of 1870, Article IV:

SEC. 24. The house of representatives shall have the sole power of impeachment, but a majority of all the members elected must concur therein. All impeachments shall be tried by the senate, and, when sitting for that purpose, the senators shall be upon oath, or affirmation, to do justice according to law and evidence. When the governor of the State is tried, the chief justice shall preside. No person shall be convicted without the concurrence of two-thirds of the senators elected. But judgment in such cases shall not extend further than removal from office and disqualification to hold any office of honor, profit, or trust under the government of this State. The party, whether convicted or acquitted, shall, nevertheless, be liable to prosecution, trial, judgment, and punishment according to law. (Page 476.)

SEC. 15. The governor and all civil officers of this State shall be liable to impeachment for any misdemeanor in this State. (Page 478.)

INDIANA.

Constitution of 1816, Article III:

SEC. 24. The governor and all civil officers of this State shall be removed from office on impeachment for and conviction of treason, bribery, or other high crimes and misdemeanors; but the judgment in such cases shall not extend, etc. [Same as in other sections.] (Page 503.)

Constitution of 1851, Article VI:

SEC. 7. All State officers shall, for crime, incapacity, or negligence, be liable to be removed from office, either by impeachment by the house of representatives, to be tried by the senate, or by a joint resolution of the general assembly, two-thirds of the members elected to each branch voting in either case therefor. (Page 520.)

SEC. 12. Any judge or prosecuting attorney who shall have been convicted of corruption or other high crime may, on information, in the name of the State, be removed from office by the supreme court, or in such other manner as may be prescribed by law. (Page 521.)

IOWA.

Constitution of 1846, Article III:

SEC. 20. (Page 540.) The governor, judges of the supreme and district courts, and other State officers shall be liable to impeachment for any misdemeanor or malfeasance in office, etc. [Same as Florida constitution, 1868, Article V, p. 351.]

Constitution of 1857:

SEC. 20. (Page 556.) [Same as section 20, Iowa constitution of 1846, Article III, p. 540.]

KANSAS.

Constitution of 1855, Article VI:

SEC. 16. Judges may be removed from office by concurrent resolution of both houses of the general assembly, if two-thirds of the members elected to each house concur therein; but no such removal shall be made upon complaint, the substance of which shall be entered upon the journal, nor until the party charged shall have had notice thereof and an opportunity to be heard. (Page 588.)

Constitution of 1857, Article VI:

SEC. 23. (Page 605.) The governor and all civil officers, etc. [Same as in constitution of Illinois of 1848, Article II, section 28, page 452.]

Constitution of 1858, Article IV:

SEC. 22. (Page 618.) [Same as Illinois constitution, section 28, page 452.]

Article VI:

SEC. 14. Judges may be removed from office by concurrent resolution of both houses of the general assembly, if two-thirds of the members elected to each house concur therein; but no such removal shall be made, except upon complaint, the substance of which shall be entered upon the journal, nor until the party charged shall have notice thereof and an opportunity to be heard.

Constitution of 1859, Article II:

SEC. 28. The governor and all other officers under this constitution shall be subject to impeachment for any misdemeanor in office, etc., as in other sections. (Page 634.)

Article III, section 15:

Justices of the supreme court and judges of the district court may be removed from office by resolution of both houses, if two-thirds of the members of each house concur. But no such removal shall be made, etc. [Same as section 14, constitution Illinois, p. 452.]

KENTUCKY.

Constitution of 1792:

Article IV. (Page 651.) [Same as section 3, constitution of Alabama, p. 40.]

Article V. The judges of both the supreme and inferior courts shall hold their offices during good behavior; but for ANY REASONABLE CAUSE, WHICH SHALL NOT BE SUFFICIENT GROUND OF IMPEACHMENT, the governor may remove any of them on the address of two-thirds of each branch of the legislature.

Constitution of 1799, Article IV:

SEC. 3. (Page 662.) [Same as section 13, Alabama constitution, p. 40.]

Article V, page 663, section 3. [Same as section 3, Alabama constitution of 1819, p. 40.]

Constitution of 1850, Article IV:

SEC. 3. For any reasonable cause the governor shall remove any of them on the address of two-thirds of each house of the general assembly: *Provided, however*, That the cause or causes for which such removal may be required shall be stated at length in such address and on the journal of each house. (Page 675.)

Constitution of 1850, Article V:

SEC. 3. (Page 678.) [Same as section 3, constitution of Alabama of 1819, p. 40.]

LOUISIANA.

Constitution of 1812, Article IV:

SEC. 5. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior; but for ANY REASONABLE CAUSE, WHICH SHALL NOT BE SUFFICIENT GROUNDS FOR IMPEACHMENT, the governor shall remove any of them on the address of three-fourths of each house of the general assembly: *Provided, however*, That the cause or causes for which such removal may be required shall be stated at length in the address and inserted on the journal of each house. (Page 705.)

Article V:

SEC. 3. (Page 705.) [Same as section 3, Alabama constitution, 1819, p. 40.]

Constitution of 1845, Title IV:

ART. 73. The judges of all courts shall be liable to impeachment; but for ANY REASONABLE CAUSE, WHICH SHALL NOT BE SUFFICIENT GROUNDS FOR IMPEACHMENT, the governor shall remove any of them on the address of three-fourths of the members present of each house of the general assembly. In every such case the cause or causes for which such removal may be required shall be stated at length in the address and inserted in the journal of each house. (Page 718.)

Title V:

ART. 86. Judgments in cases of impeachment shall extend only to removal from office and disqualification from holding any office of honor, trust, or profit under this State; but the parties convicted shall, nevertheless, be subject to indictment, trial, and punishment, according to law. (Page 719.)

ART. 87. All officers against whom articles of impeachment may be preferred shall be suspended from the exercise of their functions during the pendency of such impeachment. The appointing power may make a provisional appointment to replace any suspended officer until the decision of the impeachment.

ART. 88. The legislature shall provide by law for the trial, punishment, and removal from office of all other officers of the State by indictment or otherwise.

Constitution of 1852, Title IV:

ART. 73. (Page 732.) [Same as article 73, Louisiana constitution of 1845, page 718.]

Title V:

ARTS. 87, 88, 89. (Page 733.) [All same as articles 86, 87, and 88 of Louisiana constitution of 1845, page 718.]

Constitution of 1864, Title V:

ART. 77. The judges of all courts shall be liable to impeachment; but for ANY REASONABLE CAUSE WHICH SHALL NOT BE SUFFICIENT GROUNDS FOR IMPEACHMENT the governor shall remove any of them on the address of a majority of the members elected to each house of the general assembly. In every such case the cause or causes for which such removal may be required shall be stated at length in the address and inserted in the journal of each house. (Page 747.)

Title VI:

ARTS. 87, 88, 89. (Page 748.) [Same as articles 86, 87, 88 of Louisiana constitution of 1845, page 718.]

Constitution of 1868, Title IV:

ART. 81. The judges of all courts shall be liable to impeachment for crimes and misdemeanors. For any reasonable cause the governor shall remove any of them, etc. [Same as article 77, page 747, constitution 1864.] (Page 763.)

Title V:

ART. 97. (Page 765.) [Same as article 86, Title V, page 719, Louisiana constitution of 1845.]

MAINE.

Constitution of 1820, Article IV, part 2:

SEC. 7. The senate shall have the sole power to try all impeachments, and, when sitting for that purpose, shall be on oath or affirmation, and no person shall be convicted without the concurrence of two-thirds of the members present. Their judgment, however, shall not extend further than to removal from office and disqualification. [Same as other like sections.] (Page 793.)

Article IX:

SEC. 5. Every person holding any civil office under this State may be removed, by impeachment, for misdemeanor in office; and every person holding any office may be removed by the governor, with the advice of the council, on the address of both branches of the legislature. But, before such address shall pass either house, the causes of removal shall be stated and entered on the journal of the house in which it originated, and a copy thereof served on the person in office, that he may be admitted to a hearing in his defense. (Page 798.)

Constitution of 1820, amended 1839, Article III:

All judicial officers now in office or who may be hereafter appointed, shall, from and after the 1st day of March, in the year 1840, hold their offices for the term of seven years from the time of their respective appointments (unless sooner removed by impeachment or by address of both branches of the legislature to the executive) and no longer, unless reappointed thereto. (Page 804.)

MICHIGAN.

Constitution of 1835, Article VIII:

SEC. 1. The house of representatives shall have the sole power of impeaching all civil officers of the State for corrupt conduct in office or for crimes and misdemeanors:

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but a majority of all the members elected shall be necessary to direct an impeachment. (Page 989.)

SEC. 2. * * * judgment, in cases of impeachment, shall not extend further than to removal from office; but the party convicted shall be liable to indictment and punishment according to law.

SEC. 3. FOR ANY REASONABLE CAUSE, WHICH SHALL NOT BE SUFFICIENT GROUND FOR THE IMPEACHMENT OF THE JUDGES OF ANY OF THE COURTS, the governor shall remove any of them on the address of two-thirds of each branch of the legislature; but the cause or causes for which such removal may be required shall be stated at length in the address.

Constitution of 1850, Article XII:

SEC. 1. The house of representatives shall have the sole power of impeaching civil officers for corrupt conduct in office, or for crimes and misdemeanors. (Page 1006.)

Constitution of 1850, Article XII:

SEC. 2. * * * judgment, in case of impeachment, shall not extend further than removal from office; but the party convicted shall be liable to punishment according to law. (Page 1006.)

SEC. 4. No judicial officer shall exercise his office after an impeachment is directed until he is acquitted.

SEC. 5. The governor may make a provisional appointment to fill a vacancy occasioned by the suspension of an officer until he shall be acquitted, or until after the election and qualification of a successor.

SEC. 6. FOR REASONABLE CAUSE, WHICH SHALL NOT BE SUFFICIENT GROUND FOR THE IMPEACHMENT OF A JUDGE, the governor shall remove him on a concurrent resolution of two-thirds of the members elected to each house of the legislature; but the cause for which such removal is required shall be stated at length in such resolution.

MINNESOTA.

Constitution of 1857, Article XIII; "Impeachment and removal from office:"

SEC. 1. The governor, secretary of state, treasurer, auditor, attorney-general, and the judges of the supreme and district courts may be impeached for corrupt conduct in office, or for crimes and misdemeanors; but judgment in such case shall not extend further than to removal from office, etc., as in other sections. (Page 1040.)

SEC. 2. The legislature of this State may provide for the removal of inferior officers from office for malfeasance or nonfeasance in the performance of their duties.

SEC. 3. No officer shall exercise the duties of his office after he shall have been impeached and before his acquittal.

MISSISSIPPI.

Constitution of 1817, Article V:

SEC. 9. (Page 1062.) [Same as section 13, constitution Alabama, p. 40.]

SEC. 3. [Same as section 3, Alabama constitution, p. 40.]

Constitution of 1832, Article IV:

SEC. 27. (Page 1073.) The judges of the several courts of this State, for willful neglect of duty or other reasonable cause, shall be removed by the governor on the address of two-thirds of both houses of the legislature; the address to be joint vote of both houses. The cause or causes for which such removal shall be required, etc. [Like Article VI, constitution Alabama of 1865, p. 58.]

Constitution of 1832, Article VI:

SEC. 3. (Page 1076.) [Same as section 3, Alabama constitution of 1819, p. 40.]

Constitution of 1868, Article IV:

SEC. 28. The governor and all other civil officers under this State shall be liable to impeachment for treason, bribery, or any high crime or misdemeanor in office. (Page 1085.)

SEC. 30. Judgments in such cases shall not extend further than removal from office and disqualification to hold any office of honor, etc., as in other sections.

SEC. 31. [Same as section 27 of Arkansas constitution of 1836, p. 106.]

MISSOURI.

Constitution of 1820, Article III:

SEC. 29. (Page 1108.) [Same as section 26, Article IV, Arkansas constitution, 1836, p. 106.]

Article V:

SEC. 18. Any judge of the supreme court, or of the circuit court, or the chancellor, may be removed from office on the address of two-thirds of each house of the general

assembly to the governor for that purpose, but each house shall state on its respective journal the cause for which it shall wish the removal of such judge or chancellor, and give him notice thereof, and he shall have the right to be heard in his defense in such manner as the general assembly shall by law direct; but no judge or chancellor shall be removed in this manner for any cause for which he might have been impeached.

Constitution of 1865, Article VI:

SEC. 19 (p. 1151). [Same as section 16, Article V, constitution 1820, p. 1108.]

Article VII:

SEC. 1. (p. 1152). [Same as section 19, constitution 1849, California, p. 198.]

Constitution of 1875, Article VI:

SEC. 1. The governor, lieutenant-governor, secretary of state, State auditor, State treasurer, attorney-general, superintendent of public schools, and judges of the supreme, circuit, and criminal courts, and of the St. Louis court of appeals shall be liable to impeachment for high crimes or misdemeanors, and for misconduct, habits of drunkenness, or oppression in office. (Page 1182.)

MONTANA.

Constitution of 1889, Article V:

SEC. 17. The governor and other State and judicial officers, except justices of the peace, shall be liable to impeachment for high crimes and misdemeanors or malfeasance in office, but judgment in such cases shall only extend to removal from office and disqualification to hold any office of honor, trust, or profit under the laws of the State. The party, whether convicted or acquitted, shall, nevertheless, be liable to prosecution, trial, judgment, and punishment according to law. (Page 1206.)

SEC. 18. All officers not liable to impeachment shall be subject to removal for misconduct or malfeasance in office in such manner as may be provided by law.

NEBRASKA.

Constitution of 1866, Article II:

SEC. 29. The governor, secretary of state, auditor, treasurer, and judges of the supreme and district court shall be liable to impeachment for any misdemeanor in office, etc., as in other sections. (Page 1207.)

Constitution of 1875, Article III:

SEC. 14. The Senate and House of Representatives in joint convention shall have the sole power of impeachment; but a majority of the members elected must concur therein. * * * A notice of an impeachment of any officer other than a justice of the supreme court shall be forthwith served upon the chief justice by the secretary of the Senate, who shall thereupon call a session of the supreme court to meet at the capital within ten days after such notice to try the impeachment. A notice of an impeachment of a justice of the supreme court shall be served by the secretary of the Senate upon the judge of the judicial district within which the capital is located, and he thereupon shall notify all the judges of the district court in the State to meet with him within thirty days at the capital to sit as a court to try such impeachment, which court shall organize by electing one of its members to preside. (Page 1217.)

NEVADA.

Constitution of 1864, Article VII:

SEC. 2. The governor and other State and judicial officers, except justices of the peace, shall be liable to impeachment for misdemeanor or malfeasance in office. (Page 1257.)

SEC. 3. [Same as section 12, Illinois constitution, 1848, p. 460.]

NORTH DAKOTA.

Constitution, Article XIV:

SEC. 196. The governor and other State and judicial officers, except county judges, justices of the peace, and police magistrates, shall be liable to impeachment for habitual drunkenness, crimes, corrupt conduct, or malfeasance or misdemeanor in office, but judgment in such cases shall not extend further than removal from office and disqualification, etc., as in other sections. (Page 127.)

SEC. 197. All officers not liable to impeachment shall be subject to removal for misconduct, malfeasance, crime, or misdemeanor in office, or for habitual drunkenness or gross incompetency, in such manner as may be provided by law.

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OHIO.

Constitution of 1802, Article I:

SEC. 24. (Page 1457.) [Same as section 3, Alabama constitution, 1819, p. 40.]

Constitution of 1851, Article II:

SEC. 24. (Page 1468.) The governor, judges, and all State officers may be impeached for any misdemeanor in office, etc., as in other sections.

Constitution of 1851, Article IV:

SEC. 17. (Page 1472.) [Same as section 16, Kansas constitution of 1855, p. 588.]

OREGON.

Constitution of 1857, Article VII:

SEC. 19. Public officers shall not be impeached; but incompetency, corruption, malfeasance, or delinquency in office may be tried in the same manner as criminal offenses, and judgment may be given of dismissal from office, and such further punishment as may have been prescribed by law. (Page 1501.)

SEC. 20. The governor may remove from office a judge of the supreme court or prosecuting attorney, upon the joint resolution of the legislative assembly in which two-thirds of the members elected to each house shall concur, for incompetency, corruption, malfeasance, or delinquency in office, or other sufficient cause, stated in such resolution.

SOUTH DAKOTA.

Constitution of 1890, Article XVI:

SECS. 3 and 4. (Page 393.) [Like sections 196 and 197 of constitution of North Dakota, p. 127.]

TENNESSEE.

Constitution of 1796, Article IV:

SEC. 4. The governor and all civil officers under this State shall be liable to impeachment for any misdemeanor in office. (Page 1671.)

Constitution of 1834, Article V:

SEC. 4. The governor, judges of the supreme court, judges of inferior courts, chancellors, attorneys for the State, and secretary of state shall be liable to impeachment whenever they may, in the opinion of the house of representatives, commit any crime in their official capacity which may require disqualification.

SEC. 6. Judges and attorneys for the State may be removed from office by a concurrent vote of both houses of the general assembly, each house voting separately; but two-thirds of all the members elected to each house must concur in such vote. (Page 1683.)

Constitution of 1870, Article V:

SEC. 4. (P. 1703.) [Same as section 4, constitution of 1834, p. 1683.]

Article VI:

SEC. 6. Judges and attorneys for the State may be removed from office by a concurrent vote of both houses of the general assembly, each house voting separately, etc., same as section 6 immediately preceding. (Page 1704.)

TEXAS.

Constitution of 1836, Article VI:

SEC. 16. The president, vice-president, and all civil officers of the Republic shall be removable from office by impeachment for, and on conviction of, treason, bribery, and other high crimes and misdemeanors. (Page 1759.)

Constitution of 1845, Article IV:

SEC. 8. (Page 1772.) [Same as section 13, Alabama constitution, 1819, p. 40.]

Article IX:

SEC. 1. The power of impeachment shall be vested in the house of representatives. (Page 1780.)

SEC. 2. Impeachments of the governor, lieutenant-governor, attorney-general, secretary of state, treasurer, comptroller, and of the judges of the district courts shall be tried by the senate.

SEC. 3. Impeachments of judges of the supreme court shall be tried by the senate.

Constitution of 1866, Article IV:

SEC. 11. The judges of the supreme and district courts shall be removed by the governor on the address of two-thirds of each house of the legislature, for wilful neglect of duty or other reasonable cause, WHICH SHALL NOT BE SUFFICIENT GROUND FOR IMPEACHMENT: *Provided, however,* That the cause or causes for which such removal

shall be required shall be stated at length in such address and entered on the journals of each house: *And provided further*, That the cause or causes shall be notified to the judge so intended to be removed; and he shall be admitted to a hearing in his own defense before any vote for such address shall pass. And in all such cases the vote shall be taken by yeas and nays and entered on the journals of each house, respectively. (Page 1790.)

Article IX:

Secs. 2 and 3. (Page 1798.) [Same as sections 2 and 3, constitution of 1845, p. 1780.]

Constitution of 1868. Article V:

Sec. 10. (Page 1812.) [Same as first clause of section 11, constitution of 1866, p. 1790.]

Article VIII:

Secs. 2 and 3. (Page 1814.) [Same as sections 2 and 3, constitution of 1845, p. 1780.]

Constitution of 1876, Article XV:

Sec. 2. Impeachment of the governor, lieutenant-governor, attorney-general, treasurer, commissioner of the general land office, comptroller, and the judges of the supreme court, court of appeals, and district court shall be tried by the senate. (Page 1850.)

Address:

Sec. 8. [Same as section 11, constitution of 1866, Article IV, p. 1790.]

UTAH.

Constitution of 1895, Article VI:

Sec. 19. The governor and other State and judicial officers, except justices of the peace, shall be liable to impeachment for high crimes, misdemeanors, or malfeasance in office.

Sec. 21. All officers not liable to impeachment shall be removed for any of the offenses specified in this article in such manner as may be provided by law.

Article VIII:

Sec. 11. Judges may be removed from office by the concurrent vote of both houses of the legislature, each voting separately; but two-thirds of the members to which each house may be entitled must concur in such vote. The vote shall be determined by yeas and nays, and the names of the members voting for or against a judge, together with the cause or causes of removal, shall be entered on the journal of each house. The judge, against whom the house may be about to proceed, shall receive notice thereof, accompanied with a copy of the cause alleged for his removal, at least ten days before the day on which either house of the legislature shall act thereon.

VERMONT.

Constitution of 1793, chapter 11:

Sec. 24. Every officer of the State, whether judicial or executive, shall be liable to be impeached by the general assembly, either when in office or after his resignation or removal, for maladministration. All impeachments shall be before the governor, or lieutenant-governor and council, who shall hear and determine the same and may award costs; and no trial or impeachment shall be a bar to a prosecution at law. (Page 1880.)

WASHINGTON.

Constitution of 1889, Article V:

Sec. 2. (Page 623.) [Like sections 3 and 4 of constitution of South Dakota, 1890, Art. XVI, page 393.]

WEST VIRGINIA.

Constitution of 1861, Article III:

Sec. 10. Any officer of the State may be impeached for maladministration, corruption, incompetence, neglect of duty, or any high crime or misdemeanor. (Page 1980.)

Article VI:

Sec. 13. Judges may be removed from office for misconduct, incompetence, or neglect of duty, or on conviction of an infamous offense by the concurrent vote of a majority of all the members elected to each branch of the legislature, and the cause of removal shall be entered on the journals. (Page 1986.)

Constitution of 1872, Article IV:

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SEC. 9. Any officer of the State may be impeached for maladministration, corruption, incompetency, gross immorality, neglect of duty, or any high crime or misdemeanor. (Page 1897.)

Article VII:

SEC. 18. Judges may be removed from office by concurrent vote of both houses of the legislature, where, from age, disease or mental or bodily infirmity, they are incapable of discharging the duties of their offices. But two-thirds of the members elected to each house must concur in such vote; and the cause of removal shall be entered upon the journal of each house. (Page 2007.)

WISCONSIN.

Constitution of 1848, Article VII:

SEC. 1. The court for the trial of impeachments shall be composed of the senate. The house of representatives shall have the power of impeaching all civil officers of this State for corrupt conduct in office or for crimes and misdemeanors, but a majority of all the members elected shall concur in an impeachment. (Page 2034.)

SEC. 13. Any judge of the supreme or circuit court may be removed from office by address of both houses of the legislature if two-thirds of all the members elected to each house concur therein; but no removal shall be made by virtue of this section unless the judge complained of shall have been served with a copy of the charges against him as the ground of address, and shall have had an opportunity of being heard in his defense. On the question of removal the ayes and noes shall be entered on the journal. (Page 2036.)

WYOMING.

Constitution, Article II:

SEC. 18. (Page 769.) [Same as section 17, constitution of Montana, 1889, Article V, page 1206.]

MR. THURSTON. Call Mr. F. W. Marsh.

FREDERICK W. MARSH, sworn and examined.

By MR. THURSTON:

Q. Where do you reside?—A. Pensacola, Fla.

Q. What is your profession, if any?—A. I am an attorney at law.

Q. How long have you been practicing law?—A. Nearly eleven years.

Q. Where?—A. Pensacola, Fla.

Q. What official position, if any, have you held, or now hold?—A. I am clerk of the United States circuit and district courts for the northern district of Florida.

Q. And have been for how long?—A. For nearly ten years.

Q. Are you familiar with the record of the case of Florida McGuire v. Others that was pending in your court on November 5, 1901?—A. Yes, sir.

Q. Will you state as to whether or not in that suit one Edgar was a defendant?—A. Charles H. Edgar, described as living in New York City, was named in the præcipe for process for summons as a party defendant, and also in the declaration. But no service was made on him in that suit, and he did not appear in the suit.

Q. Were you present in court on November 5, 1901?—A. Yes, sir.

Q. Were you there when Judge Swayne made a statement from the bench in reference to a letter which he had received asking him to recuse himself in the trial of the Florida McGuire case?—A. Yes, sir; I was present.

Q. Do you remember as to whether or not Judge Paquet was there?—A. He was present.

Q. Was Mr. Belden?—A. I would not state definitely. My opinion is that he was not there.

Q. Was Mr. Davis?—A. I do not think Mr. Davis was there on November 5.

Q. Will you please tell us what the substance of that statement of the judge was?—A. The criminal docket was being disposed of, and Judge Paquet came into court. The judge suspended proceedings and called him to the bench, or called him up close to the bench, and told him that he was in receipt of a letter from him, and that he had not answered it owing to the fact that it brought to his attention matters which he thought should be disposed of in court when the other side was represented. Mr. Blount was present at the time.

He then took up the suggestions in the letter, and stated in answer to them that during the past summer he, on behalf of a relative—at that time he stated “a relative”—had negotiated for a certain block of land in the city of Pensacola known as “block 91 of the new city tract;” that during the negotiations a quitclaim deed had been forwarded for block 91, and on inquiry it was found—on inquiry from himself—it was ascertained from the agents that the reason the quitclaim was offered was that the party did not care to warrant the title against the claim of the Caro heirs.

Q. Was that the claim being litigated in the Florida McGuire case?—A. Yes.

Q. Now proceed.—A. That thereupon this deed was returned and all negotiations for that property terminated; that the matter had not been formally called to his attention in the regular way; but inasmuch as a letter had been addressed to the court in this form, unless the parties insisted on a formal application he would then undertake to dispose of it in that way; and he said that he thought under the circumstances he was qualified to try the case and felt in duty bound to go on. On the following Friday, the 8th, Judge Paquet—

Q. One moment, Mr. Marsh, before you go further. Was the letter that Judge Swayne had received presented there in court?—A. Yes, sir; Judge Swayne had the letter at the time.

Q. What became of it?—A. Judge Paquet requested to withdraw the letter, and the Judge handed it to me and I stepped over and handed it to Judge Paquet.

Q. Now, please go on and state what took place on Friday.—A. On Friday morning—I think it was Friday morning between 10 and 11 o'clock—Judge Paquet, Mr. Belden, and Mr. Davis and their clients came into court, and Judge Swayne then stated to these attorneys, referring to the previous declaration he had made in relation to his connection with this tract, and said that he desired to state further in that connection that the relative referred to was his wife, and that she had been looking for an opportunity to invest money, her own money, inherited from some relative's estate—her father's estate—I think.

Q. Were you present in court generally during that week commencing November 5?—A. Yes, sir. I was present all the time during the session of the court.

Q. How frequently was Mr. Davis there?—A. Mr. Davis came in, as I recall now, either on Wednesday or Tuesday morning. I think it was on Wednesday morning the first I noticed him. He came in accompanied by Judge Paquet and Mr. Belden and J. C. Keyser and Alberto Caro. He came in again Thursday morning, was present in the court at the times that these other parties were present, also on Friday and Saturday.

Q. During those times did Mr. Davis have anything to do or make any actual suggestion or inquiry with reference to the Florida McGuire case?—A. The only thing I noticed was that he was in conversation; during the presence of those attorneys in court he seemed to be conversing with them at various times.

Q. Did Mr. Davis, at any time during that week, speak to you about the case?—A. I do not think that he spoke to me, except to make some inquiries about how the docket was progressing. I spoke to him about it.

Q. Well, state what was said.—A. At the time of the argument that Judge Paquet was making to the court, asking that the case be postponed until the Thursday of the following week, among other remarks he said that, owing to the large number of witnesses, it would be impossible for them to get the witnesses subpoenaed in time for the hearing Monday morning.

I came down from my desk and went over to Mr. Davis and told Mr. Davis that if they desired to get any witnesses summoned that night I would stay in my office as long as he desired; that I would get out any summons for witnesses that they might file a *præcipe* for. Mr. Davis then said to me, "I will see about it," and that terminated the conversation. He went from me over to Judge Paquet and held some consultation with him. They then, after the termination of the proceedings, went out of the court room, and I saw nothing further of them that evening. I stayed in my office until about 7 o'clock transacting—closing up—some business that had accumulated, and heard nothing further from them.

Q. Were you ready and prepared at any time that evening to have issued any subpoena that they might desire for witnesses?—A. I could have gotten out summons for any number they could have filed—any reasonable number.

Q. In what length of time?—A. I could have summoned thirty or forty witnesses in ten to fifteen minutes—that is, gotten the summons out.

Q. Filled in and signed the blanks?—A. Yes, sir; blank forms; they require very little time.

Q. On that application Saturday afternoon, the 8th, at the close of the criminal docket, and when the request was made for a postponement, was any written application made?—A. For continuance or postponement?

Q. Yes, sir.—A. No, sir.

Q. Was there ever?—A. No, sir.

Q. What did Judge Swayne state from the bench when that application was made?—A. Judge Swayne stated that there was no business requiring the attendance of a jury during the ensuing week except this case: that if the counsel agreed he would set the case for Thursday; if they did not agree he would have to take it up in the usual order. On the suggestion of Mr. Blount that he demanded a trial on the ensuing Monday, the Judge stated that he would set the case for trial Monday morning at 10 o'clock unless some showing was made for continuance under the rule.

Q. Showing made on Monday morning?—A. Showing made on Monday morning at 10 o'clock, when the case was set.

Q. Was there any suggestions or any demand made by the judge that the case should proceed to trial on that Saturday afternoon?—A.

No, sir. It was a late hour, and there never was any intimation that the case was to be taken up at that time.

Q. Did Judge Swayne make any statement at that time or in relation to that matter of his purpose to leave the city at an early day?—A. No, sir; not the slightest suggestion of anything of the kind.

Q. Do you know personally how long Judge Swayne remained in Pensacola at that time?—A. Yes, sir; I do. He was then living in the Simmons cottage. His wife and family were there. He continued to hold court in Pensacola during all that week, in Tallahassee the ensuing week, and in Pensacola from the time of his return from Tallahassee until the middle of April of the ensuing year. He was there in Pensacola all of that time. I will state in that connection that the records of the court disclose the fact that Judge Swayne was present and presiding during all that time during sessions of the court.

Mr. MALLORY. I should like to ask what year was that?

Mr. THURSTON. The period was the period beginning November 5, 1901, and continuing down to April, 1902. [To the witness.] Were you present in court at the time of the proceedings under the rule to show cause why Belden, Davis, and Paquet should not be adjudged guilty of contempt?

A. I was.

Q. State, in substance, what occurred.—A. Mr. Davis and Mr. Belden appeared at 10 o'clock, as cited, and read their answer. Mr. Davis read the answer. The counsel representing the court called as the first witness, I think, Mr. Beverly H. Burton, the deputy clerk of the court.

By Mr. HIGGINS:

Q. What court?—A. The State court—the deputy clerk of the court of Escambia County, Fla. He testified that he had been called up by Mr. Keyser at his home about 8.20 Saturday night—the previous Saturday night—and had been requested to go to his office and issue a summons ad respondendum in ejectment against Charles Swayne; that on that præcipe were signed the names of Simeon Belden, Louis P. Paquet, and E. T. Davis; that Mr. Davis was an attorney of the State court, and he felt bound to comply with the request; that he went down to his office—

Mr. MALLORY. I would like to inquire what this statement is. Who made the statement the witness is detailing?

Mr. THURSTON. Mr. President, I am asking the witness now for the proceedings that took place in court on the trial of the contempt case.

Mr. MALLORY. The witness seems to be repeating the statement of somebody else.

Mr. THURSTON. Mr. President, he is now stating what the witness testified before the court on the contempt proceeding, and that testimony never having been recorded, what it was has been gone into and related by the witnesses for the managers.

The PRESIDING OFFICER. The witness is stating what Mr. Burton, the clerk of the court, testified.

Mr. THURSTON. The clerk of the State court.

The WITNESS. Mr. Burton is here, and I suggest that he make his own statement in that respect.

Q. I should like you to state what took place in court there. You

can go on with that line.—A. The next witness then was, I think, Mr. John Denham.

Q. Who was he?—A. He was the editor of the Pensacola Press. He was unable to identify a certain document, and the city editor, Mr. William P. Barker, was then placed on the stand and identified a certain document in connection with the newspaper article that had been published on Sunday morning.

Q. (Producing paper.) Is that the original document that he identified?—A. (Examining.) Yes, sir; that is the document produced by Mr. Barker.

Q. Do you know in whose handwriting that is?—A. Mr. Louis P. Paquet told me personally that it was his own handwriting.

Q. Are you acquainted with his handwriting?—A. Yes, sir.

Q. Judging from your knowledge of his handwriting, state as to whether or not that is in his handwriting.—A. Yes, sir; I think it is.

Q. And in addition to that he told you so himself?—A. Yes, sir.

Mr. THURSTON. Mr. President, we offer this in evidence, being the manuscript copy of the article which appeared in the Pensacola paper of Sunday morning, November 10, 1901.

The WITNESS. There is a certified copy of it there.

Mr. THURSTON. I will ask to have this read, and for the convenience of the Secretary ask that he read from the copy.

Mr. Manager DE ARMOND. Mr. President, I think it is already in. We have no objection to its being put in two or three times, however.

Mr. THURSTON. It will take only a moment.

The Secretary read as follows:

JUDGE SWAYNE SUMMONED AS PARTY TO THE SUIT IN CASE OF FLORIDA M'GUIRE v. PENSACOLA COMPANY ET AL.

A decided new move was made in the now celebrated case of Mrs. Florida McGuire, who is the owner by inheritance and claims the possession of what is known as the "Rivas tract," on the eastern portion of the city, near Bayou Texas, by the filing of a præcipe for summons, through her attorneys, ex-Attorney-General Simeon Belden, Judge Louis P. Paquet, of New Orleans, and E. T. Davis, of this city, in the circuit court of Escambia County, in an ejectment proceedings for possession of block 91, as per map of T. C. Watson, which is part of the property which is claimed by Mrs. Florida McGuire, and which is alleged that Judge Swayne purchased from a real estate agent in this city during the summer months, and which is a part of the property now in litigation before him.

The summons was placed in the hands of Sheriff Smith late last night for service. Filed November 12, 1901.

F. W. MARSH, Clerk.

UNITED STATES OF AMERICA, Northern District of Florida:

I, F. W. Marsh, clerk of the circuit court of the United States for the northern district of Florida, hereby certify that the foregoing is a true and correct copy of an original paper or document filed in the cause therein specified in said court on the day therein set forth as the same remains of record and on file in said court.

Witness my hand and the seal of said court at the city of Pensacola, in said district, this 3d day of February, A. D. 1905.

[SEAL.]

F. W. MARSH, Clerk.

Q. (By Mr. THURSTON.) Mr. Marsh, will you continue your statement of the testimony that was given in the case?—A. Mr. J. C. Keyser was also summoned and testified that he had received the præcipe from Louis P. Paquet, Simeon Belden, and E. T. Davis; that he was present—

Q. Did he say where?—A. At the store of George W. Pryor; that he was present at a conference at which that præcipe had been signed.

Q. Who was Keyser?—A. J. C. Keyser was one of the parties who claimed to have an interest in this tract and who had been in and about the court with these attorneys.

Q. Who was Pryor, at whose store they met?—A. Mr. Pryor had paid all costs in the case, had paid my costs, and had signed the bond for costs of the plaintiff in the case. That is all I know personally of his connection with it.

Q. Now, what did Keyser testify to?—A. I have just stated that.

Q. Oh, yes. Calling your attention to the newspaper witness, what was his name?—A. E. P. Barker.

Q. Did he state anything as to what person brought this manuscript of the article to him, and when?—A. Yes, sir; he stated that Mr. George W. Pryor had brought the article to him late Saturday evening; that he had taken it and published it as a news item.

Q. In what paper?

Mr. SPOONER. I ask that the answer may be repeated.

The PRESIDING OFFICER. The reporter will read the last question and answer.

The reporter read as follows:

Q. Did he state anything as to what person brought this manuscript of the article to him, and when?—A. Yes, sir; he stated that Mr. George W. Pryor had brought the article to him late Saturday evening; that he had taken it and published it as a news item.

Q. (By Mr. THURSTON.) What further testimony was presented?—A. I do not recall any other witnesses.

Q. Did the respondents in that proceeding present, Belden and Davis, ask to call any witnesses?—A. They called Mr. W. A. Blount and Mr. William Fisher; had them sworn; asked Mr. Blount, I think, two questions and Mr. Fisher one or two.

Q. What did they ask them, if you remember?—A. They asked them if they were interested in that litigation—in the property in issue in the Florida McGuire case.

Q. What did they answer?—A. They answered that they were.

Q. Who was Mr. Fisher?—A. Mr. William Fisher was an attorney at Pensacola, Fla.

Q. And was then and there associated with Mr. Blount in presenting the contempt case to the court?—A. Yes, sir. Mr. Fisher is now dead.

Q. Yes; that is what I was about to ask you. Did Davis or Belden make any argument in the case?—A. Mr. Davis produced a copy of the American and English Encyclopædia of Law—I think it was the second edition—and read some citations there on the construction to be given to the act of 1831, known as section 725 of the Revised Statutes.

Q. Did either of them testify in the case?—A. No, sir.

Q. Did either of them offer to be sworn and testify?—A. No, sir.

Q. Were they denied or refused any request for time?—A. No, sir; there was no suggestion.

Q. Were they refused or denied any opportunity to present witnesses?—A. No, sir; all the time that was necessary for the trial was given. There was no haste.

Q. Were they refused or denied the right to make such argument as they desired?—A. No, sir.

Mr. Manager PALMER. Mr. President, I am not objecting to this testimony, but it seems to me that the proper function of the witness is to state what did happen and not what did not happen.

Mr. THURSTON. Mr. President, if I have fallen into the unfortunate habit of asking leading questions, it is because I have been so splendidly schooled in that line in the last few days.

The PRESIDING OFFICER. Neither the managers nor counsel for the respondent ought to ask leading questions.

Mr. Manager PALMER. The objection is not that the question is leading, but the objection is that counsel is asking witness to tell what did not happen instead of what did happen; and he has taken a great deal of time to do it in.

The PRESIDING OFFICER. The question might have been asked in this form, whether Mr. Davis, Mr. Belden, or Mr. Paquet asked for any time to be given for them to prepare their defense.

Q. (By Mr. THURSTON.) At the conclusion of that hearing, Mr. Marsh, will you state as nearly as you can what Judge Swayne said and did?—A. I think I can best answer that question by saying that I read carefully Mr. Blount's summing up of that.

Mr. Manager PALMER. If the court please, I object to that. We do not care about hearing of Mr. Blount's testimony. If the witness knows anything about the subject-matter let him state it.

The PRESIDING OFFICER. The objection is sustained.

The WITNESS. The Judge, as I recollect, took up the reference to the rule and what was charged in the rule. He then took up the answer and pointed out the allegations in the rule that had not been answered to, and called attention to the evasive manner of the answer, and that it was in no way responsive to the rule. He took up next that part of the answer made by Mr. Davis alone, in which he took objection to the jurisdiction of the court on the ground that he had not asked his name to be placed of counsel until Monday morning, and said that they had in no way responded to the charge against him; that the acts in and about the court room had led the court to believe that he was of counsel in the case previous to that time. He then commented on the character of the testimony adduced; that the bringing of the suit Saturday night late, and the instructions given to the sheriff to serve the processes Saturday night by all means or by all hazards, and that the evident haste of that suit led the court to believe that there was but one purpose, and that was to influence the court in its action in the case at the time it was to be called for Monday morning; that the attempt to dismiss the case had in his mind been an afterthought and could not affect the contemptuous conduct.

He then characterized the profession of the law as the highest calling to which, in his opinion, a man could be called; that it required the utmost observance of the rules of courteous demeanor toward one another and toward the court; that the conduct of these attorneys had been very different in that respect; that the course they had pursued was crooked, or appeared to the court to be crooked, and had a vicious tendency. He spoke of the age of one of the defendants; said it was the saddest duty that he had ever had to perform in his twelve years upon the bench, and that he had looked for some extenuating circumstance in his case, but had been unable to find any that would differentiate his case from that of Mr. Davis. Then he proceeded to pronounce the sentence, which was entered, with this exception, that he

had included in the sentence a provision which disbarred the attorneys from practicing in his court for two years. This portion of the sentence was retracted almost immediately—before it was entered.

Q. (By Mr. THURSTON.) Was the attention of the court at that time or in the court that day called by Belden or Davis, or any representative of theirs, to the fact that the statute only permitted a sentence of fine or imprisonment, whereas a judgment of both had been entered?—A. No, sir.

Q. What afterwards became of that portion of that proceeding remaining against the defendant Paquet?—A. Judge Paquet was served by the marshal of the district in Louisiana with the rule after the decision on the writ of habeas corpus. He appeared and filed an answer, which raised the question of the jurisdiction of the court in his case. He sued out, shortly after that, a writ of prohibition in the circuit court of appeals, which petition was denied, and he came over personally and presented a written statement or apology in court.

Q. (Handing paper to the witness.) Is that the original written statement presented by Mr. Paquet?—A. (Examining paper.) Yes, sir; that is the original.

Q. Does it show the filing of it?—A. Yes, sir; the file mark is on there. It has been in my possession ever since.

Mr. THURSTON. Mr. President, this is the document as to the existence of which some doubt was expressed on yesterday. I do not ask to have it read, because we presented and had put into the testimony an exact copy on yesterday. I present it now for the mere purpose of removing any doubt in the minds of the Senate or of the managers that that document did and does exist. [To the witness.] What was the apparent physical condition of Mr. Belden at the time of these contempt proceedings?

A. Well, Mr. Belden came into the court in the usual way. I saw no evidence of feebleness, except that one corner of his mouth was drawn a little bit up, and his lower eyelid on the right-hand side was drawn a little down. It gave his features a slightly distorted appearance.

Q. Was either Davis or Belden asked any questions on that hearing by Judge Swayne?—A. No, sir. My recollection is quite clear on that, that Mr. Belden never said a word during the entire hearing.

Mr. Manager PALMER. That is not any answer to the question.

The WITNESS. Mr. Davis was presented by Mr. Blount with this paper that Mr. Barker produced. Mr. Blount asked him if that was his handwriting, and Mr. Davis said "No; it was not," and Mr. Blount asked him whose handwriting it was, and he said he thought it was Judge Paquet's.

Q. Did Judge Swayne from the bench ask either of them any questions?—A. No, sir; the paper had not been in Judge Swayne's possession at that time.

Q. Was any statement made at that time by either Davis or Belden, in substance, that they had never heard the Judge's statement from the bench of the reasons why he had refused to recuse himself?—A. There was no statement made by either Mr. Davis or Mr. Belden except what was contained in their answer and read.

Q. Did either of them make any statement to the effect that they had decided to dismiss the Florida McGuire suit before removing the action against Judge Swayne in the State court?—A. No, sir; there was no such statement made.

Q. Did either of them make or offer to make any statement explaining what they had done, or seeking to show that it did not constitute a contempt?

Mr. Manager PALMER. Mr. President, I object to that question. We might as well raise the issue now as at any time.

The PRESIDING OFFICER. Will counsel repeat the question?

The reporter read the question, as follows:

Q. Did either of them make or offer to make any statement explaining what they had done or seeking to show that it did not constitute a contempt?

Mr. Manager PALMER. The objection is that it is competent for the witness to state what was done and not what was not done. It is perfectly idle to take up the time of the court in asking whether Mr. Davis or Belden did not do this, that, or the other thing, when the witness has testified what did transpire there. It is a matter of fair argument whether they did thus and so, but I submit that it is not proper for the witness to testify to anything except as to what occurred on that occasion.

The PRESIDING OFFICER. On what ground does counsel ask the question?

Mr. THURSTON. Mr. President, in a matter of this sort when what has taken place has been sworn to upon the other side, I deem it entirely proper as a matter of correct examination to show that certain other things did not take place, and to contradict the statements of both Belden and Davis.

Mr. Manager PALMER. Mr. President, we have not claimed that any such thing took place. It does not contradict anything.

Mr. THURSTON. Then I will withdraw the question on that admission by the managers.

Mr. Manager PALMER. There is no admission at all; we have only proved what took place there, not what did not take place.

Mr. THURSTON. If it is not an admission I will let it go for what it is worth.

The PRESIDING OFFICER. The Presiding Officer understands the question is withdrawn.

Mr. THURSTON. It is withdrawn. [To the witness.] Do you know one Donald McLellan?

A. Yes, sir.

Q. Who was a witness here during this trial?—A. Yes, sir.

Q. I do not see the date of that conversation here. To save time looking it up, I will ask you, Mr. Marsh, do you remember the date at which you had a conversation with Mr. McLellan in your office, and also a conversation had with him in the street the following day, if you will state it?

The PRESIDING OFFICER. It is on page 269 of the record.

Mr. THURSTON. Thanks, Mr. President.

The WITNESS. The date is January 27.

Mr. THURSTON. I withdraw that last question. [To the witness.] Did you have a conversation with Mr. Donald McLellan at your office in the United States court building, city of Pensacola, Fla., on or about the 27th day of January last?

A. I did, sir.

Q. Did he or did he not state to you at that time in substance and effect as follows: That on the trial of Davis and Belden for contempt

he took down the judge's remarks just as given?—A. He stated that to me; yes, sir.

Q. Did he, or did he not, on that occasion further say that he afterwards took the manuscript to Judge Swayne, and he looked it over but made no correction?—A. He made that statement to me.

Q. Did he, or did he not, further state at that time and place that Judge Swayne then said to him that his statement was about right?—A. Yes, sir; he made that statement.

Q. Did he, or did he not, then and there state to you that there was no abusive language used by Judge Swayne at the time of the sentence?—A. Yes, sir; he made that statement.

Q. Did he, or did he not, then and there state to you that Judge Swayne did not use the expression that Mr. Davis and General Belden were a stench in the nostrils of the people, and that he did not state that their conduct was a stench in the nostrils of the people, or words to that effect?—A. Yes, sir; he made that statement.

Q. Did he, or did he not, then and there state to you that Judge Swayne did not use the expression that Mr. Davis and General Belden were a stench in the nostrils of the people, and that he did not state that their conduct was a stench in the nostrils of the people, or words to that effect?—A. Yes, sir.

Q. Did he, or did he not, then and there state to you that Judge Swayne's conduct at the trial of Davis and Belden for contempt was dignified, and that it was what he thought a judge's conduct should be?—A. Yes, sir; he made that statement.

Q. Did he, or did he not, then and there further state to you that at that time Judge Swayne's appearance was that of sadness and not of anger?—A. Yes, sir; he made that statement to me.

Q. Did you have any further conversation with him?

The PRESIDING OFFICER. What the witness McLellan stated was that Judge Swayne was sad, not angry, when sentencing Judge Belden.

Mr. THURSTON. I understand. [To the witness.] I will ask you, Mr. Marsh, did he limit that statement as to the sentence of Judge Belden?—A. No, sir; not to me.

Q. Did you have another conversation with the same gentleman on the street of Pensacola in front of the Parlor Market about that same date or the next day?—A. As I recall, it was the same day that I had the conversation with him in front of the Parlor Market.

Q. I think he said "the same day." At that time and place did he, or did he not, state to you that he had been up to the Escambia Hotel to see Judge Liddon and had been asked about that article; that he expected that he would be summoned to Washington, but did not want to go for fear he would say something he ought not to say?—A. Yes, sir; he made that statement to me.

Q. Are you familiar with the rules of practice of the circuit court of the State of Florida?—A. Yes, sir; I am.

Q. What would be the rule day for the return of process or appearance after præcipe had been served?—A. Under the laws of the State of Florida service of summons must be effected ten days before the return day, which is the first Monday of each month. The præcipe therefore must be filed the previous day. Our practice is to file a præcipe not later than the second Thursday before the first Monday of the month, and the summons must be served not later than the ensuing Friday.

MR. THURSTON. Mr. President, I have noticed that in Judge Belden's testimony he speaks of the suit of Watson & Co. against Edgar for commission as having been pending in the United States court of Pensacola. I think he evidently made a slip of the tongue, or else was incorrectly reported. In order to make that certain, however, I will ask this witness. [To the witness.] Was any such case as that brought in the United States circuit court or district court at Pensacola?

A. No, sir; that case—I examined the record myself—was brought in the county judge's court of Escambia County.

Q. In the reincarnated suit of Florida McGuire after November, 1901—for brevity's sake I call it "the Florida McGuire case"—did Mr. E. T. Davis appear as one of the attorneys?—A. Yes, sir.

Q. Was there a præcipe for witnesses filed in that case?—A. Yes, sir.

Q. (Handing paper to witness.) Is that it?

THE PRESIDING OFFICER. Was that introduced yesterday?

MR. THURSTON. No, your honor. I did not introduce it. I stated that I would introduce it.

THE WITNESS (examining paper). Yes, sir; that is the præcipe.

MR. THURSTON. I will offer this in evidence, with the permission of the Senate. I will not ask to have it read. There is a copy here that I will furnish for use in printing. [To the witness.] Were you present when that case in which the subpoenas were issued was tried?

A. Yes, sir.

Q. Do you remember the witnesses called for the plaintiff, Florida McGuire?—A. Only in a general way.

Q. About how many were there?—A. I think there were sixteen or seventeen witnesses called.

Q. Were any of them called for the plaintiff who resided outside of Pensacola?—A. I do not think there were. There was no summons issued for a witness residing outside of the city limits.

Q. Have you examined your records to see whether any further præcipes were filed for subpoenas in that case?—A. I have been unable to find any other præcipes for witnesses.

Q. Just one more thing. In the case of Florida McGuire—I have called it that without naming the defendants, in order to be brief—pending in the circuit court at Pensacola on November 5, and which was dismissed on November 11, did Mr. Davis appear formally of record in that case; and, if so, when?—A. On the morning of November 11 Mr. Davis asked that his name be entered of counsel in the cause.

Q. Was it done?—A. It was done.

Q. Did he file any paper?—A. He presented an application for an order of discontinuance. Later, in December, Mr. Davis presented to me a statement in the matter of taxation of costs which made some objections to some items that were in the process of being taxed. This paper was signed by himself and by Simeon Belden and Louis P. Paquet as attorneys.

MR. THURSTON. Mr. President, I find that I put that paper in evidence on yesterday. I therefore withdraw my offer of it to-day.

THE PRESIDING OFFICER. The Presiding Officer recollected that objection was made to it, and he decided the paper bore on the question, though it was not conclusive, and that it was put in evidence.

MR. THURSTON. Yes, Mr. President, I do not wish to duplicate it. [To the witness.] That is all.

The WITNESS. I have not answered the question yet.

The PRESIDING OFFICER. The witness has not answered the question fully. The reporter will read the last question and answer.

Mr. THURSTON. The witness had partially answered the question, and I thought he had concluded; but if there is anything further to add I should like to have read what he did say, and then let him complete his answer.

The reporter read as follows:

Q. Did he file any paper?—A. He presented an application for an order of discontinuance. Later, in December, Mr. Davis presented to me a statement in the matter of taxation of costs, which made some objections to some items that were in the process of being taxed. This paper was signed by himself and by Simeon Belden and Louis P. Paquet as attorneys.

The WITNESS. After the taxation of costs, Mr. Davis filed with me an appeal from that taxation signed by himself and Simeon Belden on, I think, January 4. I notified him the matter would be called up before the court. He accepted this notice and appeared in person and argued the matter before the court.

Mr. THURSTON. That is all.

Mr. PATTERSON. Mr. President, I desire to propound to the witness the questions which I send to the desk.

The PRESIDING OFFICER. The questions of the Senator from Colorado will be read.

The Secretary read the first question of Mr. Patterson, as follows:

Q. On the contempt trial was the statute declaring the punishment for contempt read or called to the attention of Judge Swayne?

A. Not that I recall.

The Secretary read the second question of Mr. Patterson, as follows:

Q. After the dismissal of the suit of Florida McGuire when was it recommenced?

A. The 13th day of February, 1902, as I recall, or thereabouts.

Mr. PETTUS. I desire to propound to the witness the questions which I send to the desk.

The PRESIDING OFFICER. The Senator from Alabama propounds questions, which will be read by the Secretary.

The Secretary read the first question of Mr. Pettus, as follows:

Q. By what authority did you allow the original records and papers in the Florida McGuire case to be taken from your office and brought here?

A. I just simply brought them. There is an independent record of all these transactions recorded in books and kept at Pensacola. I brought the files only.

The Secretary read the second question of Mr. Pettus, as follows:

Q. Did not Mr. Davis read to the judge on the trial of the contempt case the statute of the United States defining contempts of courts?

A. Only in so far as it was recited in the American and English encyclopædia, out of which he read. The statute itself was not given in full, but only by reference.

The Secretary read the third question of Mr. Pettus, as follows:

Q. After a civil case is placed on the trial docket, is there any rule or practice as to setting cases for trial on particular days?

A. No settled practice. The usual course is for the parties to agree. This agreement is recognized by the court, providing it would not result in holding the jury an unreasonable length of time, the require-

ment of the court being that the business be dispatched as rapidly as possible.

Mr. CULBERSON. I desire to propound four questions to the witness in consecutive order, they being numbered.

The PRESIDING OFFICER. The questions will be read by the Secretary.

The Secretary read the first question of Mr. Culberson, as follows:

Q. Did Judge Swayne ever, within your knowledge, register or cast a vote in Florida? If so, when and where did he do so?

A. No, sir.

The Secretary read the second question of Mr. Culberson, as follows:

Q. Did Judge Swayne ever, within your knowledge, pay a poll tax in Florida? If so, when and where was it paid.

A. I have no knowledge about those matters at all.

The Secretary read the third question of Mr. Culberson, as follows:

Q. State any fact within your personal knowledge, aside from any mere claim of legal residence, tending to show that Judge Swayne prior to 1900 had in Pensacola, Fla., or elsewhere in his district, a house, residence, or place of abode for himself and family.

A. Prior to October, 1900, Judge Swayne had no house rented or fixed place where he kept furniture that I know of.

The Secretary read the fourth question of Mr. Culberson, as follows:

Q. State any fact within your personal knowledge showing or tending to show that Judge Swayne, prior to 1900, exercised any right, performed any duty, or took advantage of the privilege as a resident of Pensacola, Fla., or his district.—A. That is a pretty broad question. I should have to reflect on that a moment. Just read the question again, please.

The Secretary again read the last question propounded by Mr. Culberson.

A. Early in my acquaintance with Judge Swayne he often spoke to me of—

Mr. Manager PALMER. If the court please, I object to that answer. That is not an answer to the question.

The WITNESS. That is the only kind of an answer I can give to it—that is, conversations with Judge Swayne.

Mr. CULBERSON. I ask that the question be again read to the witness. It asks for any fact within his knowledge. A witness yesterday objected that a legal question had been asked. I ask this witness to state any fact within his knowledge, and therefore would request that the question be again propounded.

The WITNESS. I understand the question now, I think.

The PRESIDING OFFICER. The question will be again read.

The Secretary again read the last question propounded by Mr. CULBERSON, as follows:

Q. State any fact within your personal knowledge showing, or tending to show, that Judge Swayne prior to 1900 exercised any right, performed any duty, or took advantage of the privilege as a resident of Pensacola, Fla., or his district.

A. If that question refers to voting and paying taxes, I have no information on the subject at all. The only information I could give would be conversations with Judge Swayne—

Mr. Manager PALMER, Mr. Manager POWERS, and Mr. Manager OLMSTED. Do not give them.

A. And his endeavors to get a house in Pensacola.

Cross-examined by Mr. Manager PALMER:

Q. Mr. Marsh, you say that Davis called the attention of Judge Swayne to the act of 1831?—A. He read some provision out of the encyclopædia. I do not recall the exact citation.

Q. He called his attention to the fact that a contempt could not be punished summarily unless it was committed within the presence of the court or so near thereto as to disturb the administration of justice or in violation of some positive decree, order, or judgment of the court?—A. I do not think that was the character of the citation he gave. It was on some other point.

Q. You say that what he did read he read out of the American and English encyclopædia?—A. Yes, sir.

Q. Did he have the book there?—A. Yes, sir.

Q. Did Judge Swayne have the act of 1831, providing for the punishment of contempts, before him during the trial of that case?—A. If I recall, the Revised Statutes were not used at all during the trial.

Q. How long was it after the testimony in the case closed before Judge Swayne imposed the sentence on these men?—A. He deliberated only a few moments. Probably two or three minutes.

Q. Did he examine the statutes between the time the testimony was closed and the time he pronounced sentence?—A. I do not recall that he did.

Q. Did Judge Swayne to your knowledge ever examine that statute with reference to this case?

The WITNESS. Afterwards or before?

Q. Before.—A. Not before that I recall.

Q. Did he examine the statute afterwards?—A. I think; yes, sir.

Q. That is to say, after these men went to jail, then he did examine the statute?—A. No; it was after the decision in the circuit court of appeals.

Q. Then it was after the men had been put in jail, was it not?—A. Yes, sir.

Q. Up to the time the men were committed to jail, to your knowledge had Judge Swayne ever examined the statute?—A. No, sir; not in my presence or that I recall.

Q. Were the Revised Statutes in the library of the court?—A. Yes, sir; I had possession of them.

Q. And the judge could have examined them if he had asked for them?—A. I should have certainly afforded them; yes, sir.

Q. Now, you say on Monday, the 5th of November, Judge Swayne made a statement that he had received a letter from Belden and Paquet stating that they had understood that he had negotiated the purchase of a part of the tract of land in dispute in the Florida McGuire case?—A. That, I think, was Tuesday, November 5.

Q. On Tuesday, November 5, was it?—A. Yes, sir.

Q. And Paquet was present in court?—A. Yes, sir.

Q. And Judge Swayne stated that when he ascertained that this land was in controversy before him he broke off the negotiations?—A. He stated that when the quitclaim deed—

Q. You just answer the question that I asked. Did he state then and there that he broke off the negotiations when he found out that the land was in controversy before him?—A. When he found out it was a quitclaim deed—

Q. Do you know what statement was put on record on the 11th of November?—A. Yes, sir.

Q. Does he say anything about a quitclaim in that statement?—A. In that statement he says that when the quitclaim was sent to him he discovered by inquiry that the property was the same as that in litigation before him.

Q. Did he in his statement on the 5th of November say anything about a quitclaim deed?—A. I think he did; yes, sir; that is my recollection.

Q. Now listen. Was not the reason he gave for breaking off negotiations that he discovered that the land was in litigation before him?—A. Only inferentially. I do not think he stated—

Q. He did not state that proposition?—A. I do not think he stated that proposition squarely; no, sir.

Q. Did he state then and there that Mr. Hooton had told him when he purchased the land that it was a part of the Cheveaux or Rivas tract and was in suit before him?—A. No; he did not refer to that.

Q. He stated then and there that he never found out that the property was in controversy before him until after he received the letter from the agent?—A. No; he did not go to that extent.

Q. Did he state the time when he ascertained that the property was in litigation before him?—A. He said on inquiry in relation to the quitclaim deed he found that the property was in litigation in that suit.

Q. Then he stated practically that he did not find out that the property was in litigation until after the deed was sent to him?—A. I am not testifying as to conclusions.

Q. I call your attention to the American and English Encyclopædia of Law on page 32, and ask you to state whether the portion I will read was what Mr. Davis called to the attention of the court:

United States Statutes, section 724 (U. S. Rev. Stat.), limits the power of the Federal courts to punish for contempts, and defines contempts to be either: (1) contempts committed in the presence of the court; (2) the misbehavior of an officer of the court in his official transactions; or (3) the disobedience or the resistance by any officer, party, juror, or other person to any lawful writ, process, order, rule, decree, or command of the court.

Was not that what Davis read?

A. I do not recall that he read that portion. I think it was some subsequent citation from that book. I am not certain about that. I would not attempt—

Q. Is there any subsequent citation in this book on the subject of the act of 1831?—A. My recollection is not clear as to what he did read.

Q. If there is not in this book any reference to the act of 1831 except that, it must be the one he read?—A. That would be the conclusion; yes, sir.

Q. Did Judge Swayne state that the reason why he returned the quitclaim deed was because he found that the property was in litigation before him?—A. Well—

Q. You can answer that yes or no.—A. I can not recall exactly the ground on which he placed it. I took down his statement in writing and reduced it to the record—the statement of November 11.

Q. You put on the record on November 11 the statement he made on November 5?—A. No; the statement he made on November 11 I took down—

Q. This is the statement he made on Tuesday, November 5, according to the record that you have certified in this case? Listen:

On Tuesday, November 5, 1901, at the time of the presentation of the said motion by plaintiffs, that the court recuse himself, he had then stated and now states that he never agreed to accept nor ever accepted any deed to any portion of the said Chevaux tract; that, as he stated, a member of his family, to wit, his wife, had, with money inherited by her from her father's estate, negotiated for the purchase of some city lots in Pensacola; that certain deeds in connection therewith had been sent to her in Delaware, one of them proving to be a quitclaim deed, and upon investigation and inquiry it was found that the property in this deed was a portion of the property in litigation in the suit of Florida McGuire v. Pensacola City Company et al., and that thereupon, and by his advice, the said deed was returned to the proposed grantors with the statement that no further negotiations whatever could be conducted by them in relation to this property, and they thereupon refused to purchase, either at the present time or in the future, any portion of the said tract.

Q. Is that the memorandum you wrote down?—A. I made that record on November 11—of the statement of Judge Swayne made on November 11.

Q. Then the reason the Judge gave for refusing to go on with the negotiations is because he found the property was in litigation before him?—A. I do not understand that that is stated—

Q. That is what the statement says. I am asking you if that is what was said at that time.—A. That is what I reduced to the record.

Q. How did you come to talk with this man McLellan?—A. I had received a request from Senator Higgins to find out who the reporter was who wrote the article in the Pensacola News of November 12. I had inquired of the business manager—

Q. Then you were interested in getting testimony in this case because Senator Higgins asked you to?—A. Yes, sir.

Q. That is the reason why you inquired of the reporter?—A. Yes, sir.

Q. You say the reporter told you that Judge Swayne did not state then and there that the conduct of these men was a stench in the nostrils of the community?—A. Yes, sir; I put that question squarely to him.

Q. The reporter was mistaken in that statement, because Judge Swayne did say that, according to your testimony?—A. No; not my testimony. I have not said so in my testimony.

Q. I will ask you now if Judge Swayne did not say that the conduct of these men was a stench in the nostrils of the community?—A. I have no recollection of any such statement.

Q. Did you not just state that on the witness stand here?—A. I have just stated that Judge Swayne said that their conduct had a vicious tendency, and that they had adopted crooked methods. That—

Q. Did you not state—

Mr. THURSTON. Let him answer.

Mr. Manager PALMER. All right.

A. That is my recollection.

Q. (By Mr. Manager PALMER.) Did you not state here within ten minutes that he said that the conduct of these men was a stench in the nostrils of the community?—A. No, sir; I will stand by my testimony on that subject.

Q. How long was it after the contempt proceedings before these lawyers were put into the hands of the marshal and started to jail?—A. About an hour and ten or fifteen minutes.

Q. Then the whole trial, the testimony of the witnesses and the deliverance of the judge, occupied an hour and ten minutes?—A. Yes, sir.

Q. Have you given all the testimony that was given on that occasion, or substantially all?—A. I think I have given in substance——

Q. You have given the names of the witnesses who were sworn and substantially what they testified to?—A. No; I have not gone into detail.

Q. What officer took these men to prison?—A. The United States marshal.

Q. Was he there in court?—A. Yes, sir.

Q. Did the judge order him to take them to prison?—A. There was no specific order. The sentence was that they stand committed until the terms of the sentence were complied with.

Q. Did the marshal walk up and take them?—A. I do not know.

Q. Did he have a commitment?—A. Not for ten or twenty minutes; probably a half hour afterwards.

Q. The commitment had not been prepared when the marshal took them away?—A. I do not know what he did on that subject. I went out to prepare the commitment.

Q. What did you do with it?—A. Gave it to the marshal.

Q. The men were then in prison?—A. I do not know.

Q. Were they there?—A. They were not in the marshal's office.

Q. They had gone to some place?—A. They had gone.

Q. The marshal was there alone?—A. I do not know that I noticed whether they were in court or not.

Q. Then, beyond any doubt, they were in prison by the time you delivered the commitment?—A. Yes, sir; but I have no knowledge——

Q. The marshal made haste to put them in prison before he received the commitment?—A. I do not know what he did.

Q. Where was Judge Swayne?—A. He went to his office immediately.

Q. As soon as he pronounced sentence he left the place?—A. Within a few moments.

Q. Did he order you to make out the commitment?—A. No, sir.

Q. You did of your own motion?—A. I made it out as a matter of course.

Q. Who issued the subpoenas in this case?—A. I did.

Q. To whom did you give them?—A. To the marshal.

Q. Who ordered you to issue them?—A. Mr. Fisher filed the præcipe for the witnesses.

Q. Who is Mr. Fisher?—A. An attorney at law at Pensacola.

Q. And one of the defendants in the Florida McGuire case?—A. One of the attorneys appointed by the court.

Q. To do what?—A. For the purpose of investigating this charge made by Mr. W. A. Blount.

Q. When did the court appoint attorneys to investigate this charge?—A. On Monday morning.

Q. Did you have any conversation with Judge Swayne on this subject?—A. None whatever.

Q. Did he have any conversation with Blount or Fisher on Monday morning?—A. Not in my presence.

Q. Or to your knowledge?—A. No, sir.

Q. Was anybody else appointed to investigate this case and present it to the court than Blount and Fisher?—A. That is all.

Q. And they were both defendants in the case?—A. Yes, sir.

Q. Now, in the Paquet case, did not Paquet come there and have a trial before Judge Swayne and bring a lawyer from New Orleans to defend him?—A. Judge Paquet came over to file an answer.

Q. I am not asking you about that. Listen to my question and answer it. Did not Judge Paquet come to Pensacola and bring a lawyer from New Orleans and have a trial before Judge Swayne?—A. I do not recall that he had anything, except possibly an argument on his answer, and not a trial.

Q. Did he make the argument himself, or did his counsel whom he brought from New Orleans make it?—A. I do not recall. I think possibly Mr. Wilkins came over with him.

Q. Did not Mr. Boatner come?—A. Possibly it was Mr. Boatner.

Q. Why is not your recollection as vivid on that subject as it is as to the details of the contempt proceedings?—A. I have recalled it substantially.

Q. After it was determined that Paquet had to go to jail he apologized to keep out of jail?—A. It was not determined before. A point was raised as to the jurisdiction of the court in the nature of an exception.

Q. Did Judge Swayne decide that against him?—A. There is no record of any decision.

Q. I am not asking whether there is any record.—A. No; it was not determined.

Q. Did he intimate his decision?—A. On the argument? I think not.

Q. At any other time?—A. No, sir.

Q. If the Judge was going to decide in favor of Mr. Paquet there would have been no occasion for making the apology?—A. I do know that he filed a petition for a writ of prohibition.

Q. On the contempt trial the first thing was to sentence the men to be disbarred for two years?—A. That was included in the sentence.

Q. Whether it was the first or the middle or the last, it was somewhere along the line?—A. Yes, sir.

Q. Why did he take that back?—A. Mr. Blount spoke to him.

Q. What did he say?—A. I did not hear it.

Q. Did Mr. Blount walk up to the desk and speak to Judge Swayne?—A. Yes, sir.

Q. And immediately Judge Swayne took it off?—A. Yes, sir.

Q. And you do not know what was said?—A. I did not hear the conversation. It was in a whisper.

Q. It was in whispers?—A. Yes, sir.

Q. Did Judge Swayne at that time examine the act of 1831 to see whether Mr. Blount was right or whether he was right?—A. I do not think he did; no, sir.

Q. Did Barker tell you from whom he got that article?—A. Barker testified in the trial that Mr. George W. Pryor delivered it to him.

Q. That is, at the printing office?—A. Yes, sir.

Q. How did you come to be so observant of Mr. Davis during the week that preceded the contempt proceedings?—A. I do not know how I came to. I know that I recall the circumstances very distinctly. That is all I can say.

Q. Can you give the same account of the actions and conversations of every other lawyer who came into court during that week?—A. I think I can recall in a general way circumstances of that kind at any period. I may and I may not be able to—

Q. Have you any reason to suppose that Mr. Davis was counsel in the Florida McGuire case other than those you have given here?—A. I accepted it as a matter of course, and that is the reason I made my proposition to him about the witnesses.

Q. You say you saw him conversing with Paquet, and therefore you concluded that he must be of counsel?—A. He came in with them and left with them, and that was the only affair or only business he had in court. He had no other case—

Q. That is the only reason you had for concluding that he was of counsel in that case?—A. Yes, sir.

Q. He was not counsel of record?—A. No, sir.

Q. Until Monday?—A. No, sir.

Q. When he came in and asked to have his name put of record and asked to have the case discontinued?—A. I will say that is a very usual proceeding.

Q. I am not asking you whether it is a usual proceeding. Please answer my question. Who appointed you to your office?

Mr. SCOTT. Mr. President, I should like it if the manager would give the witness time to answer the question. Before he can answer a question counsel propounds another.

Mr. GALLINGER. Mr. President, I was about to rise to a point of order, that the witness ought to be allowed the privilege of answering questions in full. He has been interrupted time and again by the honorable manager.

Mr. Manager PALMER. If I may be permitted, I only interrupt the witness when he is giving an unresponsive answer.

Mr. GALLINGER. Not always.

Mr. SCOTT. Give him time to answer.

Q. (By Mr. Manager PALMER.) I ask you who appointed you to your office?—A. Judge Pardee.

Q. When?—A. May 28, 1895.

Q. Have you any interest in the result of this case?—A. Well, friendly interest; yes, sir.

Q. Have you any interest in the event?—A. Only in a friendly way, so far as I understand—

Q. If Judge Swayne should be removed do you expect to lose your office?—A. I have no such expectation.

Q. Have you taken a lively interest in the preparation of this case?—A. Yes, sir. I will amend an answer that I made. I started to make the answer. I was appointed by Judge Pardee on May 28, 1895, clerk of the circuit court. I was appointed June 12 following by Judge Swayne clerk of the district court.

Q. Then you are an appointee of Judge Swayne?—A. So far as the district clerkship is concerned.

Q. Have you consulted with Judge Swayne from time to time about the preparation of this case?—A. Yes, sir.

Q. And you have been instrumental in securing witnesses and have assisted in the preparation of the case?—A. Yes, sir.

Q. State whether or not this office you hold under Judge Swayne's

appointment, that of clerk of the district court, is at his pleasure.—A. Yes, sir; at the pleasure of the district judge.

Q. Was Judge Swayne on the bench at the time the marshal took these men away to prison?—A. I do not recall whether Judge Swayne was on the bench when he took them away. I did not see the taking away of Mr. Davis and Belden. I went immediately to my room and fixed up the warrant of sentence.

Mr. Manager PALMER. That is all.

Mr. THURSTON. That is all.

Mr. MORGAN. I have some questions I desire to have propounded to the witness.

The PRESIDING OFFICER. The Senator from Alabama propounds questions to the witness. They will be read by the Secretary.

The Secretary read as follows:

Q. When Mr. Paquet presented his apology to Judge Swayne had the prohibition proceeding and the proceedings on the writ of habeas corpus been decided?

A. Yes, sir.

The Secretary read as follows:

Q. Had Davis paid the fine and had Belden suffered the imprisonment imposed upon them before Paquet made his apology?

A. Yes, sir.

The Secretary read as follows:

Q. At the time Paquet made his apology did he have any causes or business in the court over which Judge Swayne was presiding?

A. I think not. I think at that time he had withdrawn from the Florida McGuire case. That was in March, and, as I recall now, when the second suit was brought Judge Paquet's name was not of counsel, and that was the only case he had before the court at that time or since.

Mr. BACON. I wish to propound a question.

The PRESIDING OFFICER. The Secretary will read the question.

The Secretary read as follows:

Q. Did Judge Swayne pronounce sentence orally, or did he read it from a written paper?

A. He pronounced sentence orally, without reference to any paper, so far as I remember.

The PRESIDING OFFICER. Who is the next witness?

Mr. THURSTON. Call Beverly Burton.

BEVERLY H. BURTON sworn and examined.

Mr. HIGGINS. Possibly the Secretary had better repeat the answers of the witness; he seems to have a cold.

The reading clerk repeated the answers of the witness.

By Mr. THURSTON:

Q. What official position did you hold, if any, on the 9th day of November, 1901?—A. I was deputy clerk of the circuit court.

Q. Of what county?—A. Escambia County, Fla.

Q. At any time on that day or evening did you receive a præcipe for the issuance of a writ in a case of ejectment brought by Florida McGuire against Charles Swayne?—A. Yes, sir.

Q. What attorney's name, if any, was signed to it?—A. Simeon Belden, E. T. Davis, and Paquet, I think.

Q. Who brought it to you?—A. It was brought by Joseph Keyser.

Q. Where were you at the time?—A. At my home.

Q. Your residence?—A. Yes, sir.

Q. Not at your office?—A. No, sir.

Q. At what time in the evening?—A. It was about 8.20.

Q. When it was presented to you what did Keyser say?—A. He asked me to go down to the office and issue it and then get the sheriff to serve it immediately.

Q. Was that all he said?—A. Yes, sir; I think so.

Mr. THURSTON. That is all.

Mr. Manager PALMER. We have no questions.

The PRESIDING OFFICER. The next witness.

ELIJAH B. BARKER sworn and examined.

By Mr. THURSTON:

Q. Where do you reside?—A. I now reside in Uniontown, Ala.

Q. Where did you reside in November, 1901?—A. Pensacola, Fla.

Q. What was your business then?—A. I was city editor of the Daily Press.

Q. On the evening of November 9, 1901, did anyone bring this manuscript article to you [handing witness manuscript]?—A. (After examining.) Yes, sir.

Q. Where were you at the time?—A. I had just started to leave my office, and I met Mr. Pryor—George W. Pryor—at the door. He told me that Mr. Paquet had sent this to me for publication—Paquet, of New Orleans. He was then in Pensacola. I read it and saw it was a good piece of news, and I told him I would publish it if he would promise not to give it to the other papers.

Mr. Manager PALMER. I do not think a conversation between this man and Mr. Pryor is of any consequence, and I object to it.

The PRESIDING OFFICER. Is it claimed by the counsel?

Mr. THURSTON. I do not need to claim that, because I can reach it in another way. [To the witness.] Were you a witness in court at the trial for contempt of Belden and Davis?

A. Yes, sir.

Q. Were you sworn as a witness there?—A. Yes, sir.

Q. Will you detail what statement you made as a witness there concerning this same transaction?—A. Well, I was asked did I write this article. I had then a copy of the paper with me also, and I carried this into court. I told him I did not. Then he asked me where I got it. I told him George W. Pryor brought it to me between 10 and 11 o'clock on Saturday night, the 9th—I think this was on Monday I was being examined—and that Mr. Pryor told me that Mr. Paquet had written it and sent it to the paper. I told Mr. Pryor that I would publish it and would not charge anything for it if he would give me the scoop—not to carry it to the other papers. He promised that he would.

Mr. THURSTON (producing paper). Mr. President, I exhibit the paper identified and testified to by the witness in order to show that it is the same paper already in evidence.

The WITNESS. I wrote the headlines to it myself.

Mr. THURSTON. I think the witness discloses the fact that he was an enterprising newspaper man. That is all, Mr. Barker.

The PRESIDING OFFICER. Do the managers on the part of the House desire to cross-examine the witness?

Mr. Manager PALMER. No, sir.

THOMAS F. MCGOURIN sworn and examined.

By Mr. THURSTON:

Q. Where do you reside?—A. Pensacola, Fla.

Q. In November, 1901, did you hold any office? If so, what?—A. Yes, sir; I was United States marshal in and for the northern district of Florida.

Q. Were you present at the proceedings in contempt against Davis and Belden on November 12 of that year?—A. I was present during the concluding part of that trial, which covered only the period in which the judge passed sentence on the defendants.

Q. Did you hear the statement of the judge in proceeding to render judgment and in sentencing the defendants?—A. I did.

Q. Will you please state it according to your best recollection?—A. I can state it in substance and effect only.

Q. Yes. Please do so.—A. The Judge began his remarks by a reference to the rule and answer and testimony as showing to the court that these attorneys in bringing the case would bring it for the purpose of impeding and influencing the action of the court in this case; that their purpose was to discredit the court in the eyes of the people. The judge spoke of the nobility of the profession of the law, and how well the ethics of that profession had been maintained by members of the bar. He also spoke of the age of one of the defendants and the great regret he felt in having to pronounce sentence upon him. That is the gist of the remarks as I remember.

Q. In your recollection was there any expression used to the effect that the action of the defendants was a stench in the nostrils of the community?—A. No, sir; I remember no such remark.

Q. You heard all that was said?—A. I did; all that the Judge said.

Q. Yes; all that the Judge said. What was the general appearance of Judge Swayne in the delivery of these remarks?—A. As I recall it, I thought the Judge spoke with a little more than ordinary deliberation and calmness and firmness, and the impression that was created on my mind was that—

Mr. Manager PALMER. Mr. President, I object to the impression created on the witness's mind. What he is entitled to testify to are facts that occurred there at that time.

Mr. THURSTON. Mr. President, they asked their own witnesses questions of that kind and they were permitted to answer.

Mr. Manager PALMER. Did you object?

Mr. THURSTON. No, sir; I did not object, because if I had objected to all the improper questions asked we would have been here until next summer.

Mr. Manager PALMER. No; I think not.

The PRESIDING OFFICER. The Presiding Officer was not paying strict attention to the answer of the witness.

Mr. THURSTON. There is no objection made to my question, but they object now to what the witness was beginning to say. I should like to have the reporter read it.

The PRESIDING OFFICER. The last question and the answer will be read by the reporter.

The reporter read as follows:

Q. What was the general appearance of Judge Swayne in the delivery of these remarks?—A. As I recall it, I thought the judge spoke with a little more than ordinary deliberation and calmness and firmness, and the impression that was created on my mind was that—

The PRESIDING OFFICER. Let the last phrase be stricken out.- The witness can not testify to the impression made on his mind.

Q. (By Mr. THURSTON.) What was the appearance of the Judge, as to his speaking in anger or not?—A. He exhibited no anger whatever that I could observe. He appeared as sad rather than angry—sadness.

Q. Did you see Mr. Belden at that time?—A. Yes, sir.

Q. What was his general appearance as far as you noticed as to health?—A. Well, he seemed to be suffering from some facial trouble—paralysis, I believe.

Q. Aside from that, was there any appearance of any special trouble or ill health?—A. None whatever that I know of.

Q. (Producing paper.) I show you that list of witnesses with the residence opposite their names, and I will ask you how long it would have taken you to have served subpoenas on all those witnesses if you let me see—how many?

Q. Had been requested to do so?—A. (Examining paper.) There are—Mr. THURSTON. Twelve, I believe.

The WITNESS. The most of them were within easy reach of the court-house. I would say two hours. I believe they could all have been reached within two hours' time.

Q. (By Mr. THURSTON.) If subpoenas for them had been placed in your hands on Saturday evening, November 9, 1901, could you have served them all that evening?—A. Yes, sir; unless they were out of the city, or something of that kind.

Q. Was any subpoena placed in your hands or any request made upon you in the matter of summoning witnesses for the plaintiff, Florida McGuire, on the trial then pending in your court at any time on the afternoon or evening of Saturday, November 9, 1901?—A. I think not. I am speaking from memory. It is reasonably certain there was not.

Mr. THURSTON. That is all, Mr. President.

Cross-examined by Mr. Manager POWERS:

Q. Mr. McGourin, are you the marshal of the district court of the northern district of Florida at the present time?—A. I am.

Q. And you were in 1900 and 1901?—A. I was.

Q. Did anyone request you to be in court at the time that Belden and Davis were sentenced?—A. Did anyone request me to be in court?

Q. Yes.—A. No, sir.

Q. And you came in, as I understand, when the trial was in progress?—A. Yes, sir.

Q. And that trial lasted about one hour?—A. I do not know how long.

Q. Well, how far had it advanced when you came into court?—A. It had advanced to the period just before Judge Swayne began to pronounce sentence.

Q. Then I understand that you heard the entire sentence of Judge Swayne?—A. Yes, sir.

Q. And how long did that occupy?—A. Very few moments; I do not know. Do you want me to approximate the time?

Q. Well, about how many minutes?—A. Oh, I would say from five to ten minutes.

Q. Now, did Judge Swayne, in pronouncing that sentence, state under what statute he rendered it?—A. Well, I could not state as to that.

Q. Did he refer to any statute under which the respondents were guilty?—A. Well, I could not answer that, either.

Q. Did he state for what offense he sentenced Belden and Davis?—A. My recollection is for contempt.

Q. Well, what was the form of contempt? What had they done that made them liable to be committed for contempt?—A. Something along their professional lines that had occurred some time prior.

Q. I know; but I understood you to say that you heard the entire sentence.—A. I did.

Q. Did not the Judge in that sentence state what he was sentencing them for?—A. He may have. I also stated, sir, that I did not remember the Judge's language. I remember the substance and effect of it only.

Q. Can you not tell this court for what offense, as Judge Swayne expressed it, he sentenced these men?—A. That was for contempt of court.

Q. And what had they done that constituted contempt?—A. Well, I could not answer that only in a general way. Then it would be upon general knowledge, not from any personal.

Q. Did you take these men to prison?—A. I took one of them.

Q. Which one?—A. Mr. Belden.

Q. Who took Davis?—A. One of my deputies.

Q. How soon after the sentence was completed was it that you had them in jail?—A. Well, I do not know as to that either.

Q. How many minutes?—A. I do not know.

Q. Did you have any commitment when you went to jail?—A. I presume I had, for I would hardly take a man to jail without authority to do so.

Q. Well, did you detain them until the commitment was completed?—A. I think it is a safe proposition to say that I did; but at the same time I could not state now, definitely. The matter has passed out of my recollection almost completely.

Q. What occasion was there, Mr. Marshal, why these men should be hurried off to jail?—A. They were not hurried off to jail.

Q. How many minutes was it between the sentence and the time these men reached the jail?—A. I do not know.

Q. Now, I understood you to say that Judge Swayne's manner was deliberate, but was not angry?—A. That is what I said.

Q. Did you hear him use the expression that these men were ignorant?—A. I think not.

Q. Did you hear him use the expression that they were guilty of crooked transactions?—A. I do not know that I did.

Q. You did not, I understand, hear him use the expression that their conduct was a stench in the nostrils of the people?—A. I did not; at least, I do not remember it, and I think I would have remembered it if I had.

Q. Then you heard nothing in that sentence that led you to assume that the language which was used by the judge was in any way in criticism of those respondents?—A. Well, I do not quite understand your question, sir.

Q. I understand you to say that Judge Swayne was not angry; that he was deliberate; that when he referred to Belden he spoke with great sadness; that he did not use the expression that the counsel were ignorant or crooked or that their conduct was a stench in the nostrils

of the people?—A. I said I did not remember of his using those words, save the last ones with reference to their being a stench in the nostrils of the people.

Q. Do you remember that?—A. I do not.

Q. You heard the entire sentence?—A. I did.

Q. And you have stated to the best of your recollection just what took place at that trial and that commitment?—A. At that sentence—not the trial, the sentence.

Q. Well, at the sentence?—A. Yes, sir.

Mr. Manager POWERS. I think that is all.

Mr. THURSTON. That is all.

HERMAN WOLF sworn and examined.

By Mr. THURSTON:

Q. Where do you live?—A. In Pensacola, Fla.

Q. Did you hold any official position in November, 1901?—A. I did.

Q. What?—A. I was chief deputy in the United States marshal's office.

Q. Were you present in the court room at any time during the hearing of the contempt proceedings against Belden and Davis?—A. I was there when the sentence was pronounced.

Q. Did you hear what Judge Swayne said in pronouncing that sentence?—A. I did.

Q. State as nearly as you can remember and in substance and effect what he said.—A. I could not give any correct idea at this time of just what he did say. I could not say.

Mr. TELLER. Mr. President, there is too much noise in the Chamber. The witness does not speak very loud, and we can not hear over here at all.

The PRESIDING OFFICER. The Senate will please be in order.

Q. (By Mr. THURSTON.) Did he use any such expression as that the action of the attorneys defendant was a stench in the nostrils of the people, or words to that effect?—A. I do not recall any such language. I do not think it was used.

Q. What was the general appearance and manner of Judge Swayne in the delivery of that sentence?—A. Very dignified, deliberate, and calm.

Q. What, if any, evidences were there in his manner or appearance or delivery of the sentence indicating anger on his part?—A. Not that I could observe.

Q. What, if any, exhibition of feeling did he appear to give?—A. He appeared to be kind—perfectly calm.

Mr. THURSTON. That is all.

Cross-examined by Mr. Manager POWERS:

Q. A single question. Did I understand that you are at the present time a deputy marshal?—A. I am.

Q. And under Marshal McGourin?—A. I am.

Q. And you were present in the court with Marshal McGourin at the time of the sentence of Davis and Belden?—A. I was.

Q. Did you enter the court room with Marshal McGourin?—A. I did not.

Q. How happened you to be in the court room that morning?—A. I go in, as a general thing, when sentence is passed of any kind, because

it is a part of my duty to be there to know what has to be done with those parties that sentence is passed upon.

Q. Did you hear the trial of Belden and Davis?—A. I heard part of it only.

Q. You heard the entire sentence of Judge Swayne?—A. I did.

Q. Did I understand you to say that he spoke with great kindness and used no harsh language?—A. I did not say "great kindness." I said with kindness; but he did not use any harsh language.

Q. That is, he spoke with kindness and used no harsh language?—A. I did say that.

Q. Now, did you hear the Judge in the course of the sentence make any reference to the defendants or respondents being ignorant men?—A. I did not.

Q. Or being men who were guilty of crooked conduct?—A. I do not recall language of that kind. There might have been something of that kind used, but not in that way.

Q. Or being men whose conduct was a stench in the nostrils of the people?—A. If such language was used I do not remember it. I am positive that I did not hear it.

Q. Did you hear any language used by the court which reflected upon the conduct of the respondents?—A. I did not.

Q. In other words, the Judge sent these men to prison without any criticism of their conduct? Is that so?—A. I did not say that.

Q. You say you heard no language that reflected upon their conduct?—A. There is a difference between criticism and reflection.

Q. Then, as I understand, you have left it that Judge Swayne, in his sentence of Belden and Davis, said nothing which reflected upon their conduct?—A. That is the way I understood it.

Q. They went to prison all the same?—A. They did.

Q. You took one, did you?—A. I did not.

Q. Who did take them to prison?—A. The field deputy.

Q. How soon after the sentence was it that they were on their way to prison?—A. Almost immediately thereafter.

Q. And did you see Judge Swayne in the court-house when they were taken out?—A. After the prisoners were turned over to the field deputy I went to the side door and went into my office, and I do not know that Judge Swayne left the court room at that moment or not.

Q. Who made out the commitment?—A. Clerk Marsh.

Q. And was the commitment made out before the hearing, the trial, or after the trial?—A. I am not aware of that. It does not come into my hands until it is necessary for it to be served.

Q. Did that commitment come into your hands?—A. The commitment did come into my hands.

Q. How soon after the sentence did it reach your hands?—A. I could not say; it is a small circumstance that escaped my memory entirely. I do not know just when.

Q. Well, how many minutes?—A. I could not say.

Q. Would you say it was more than five minutes before the commitment reached your hands after the sentence?—A. How?

Q. Was it more than five minutes after the sentence before the commitment reached you?—A. I would not express any opinion on that matter, because I do not recall it at all.

Q. You would not say, then, that it was more than five minutes?—

A. I would not say anything about it, because I could not make a definite statement of it.

Mr. Manager POWERS. That is all.

Reexamined by Mr. THURSTON:

Q. Mr. Wolf, a question on one other subject. Did you have a conversation with Donald McLellan on Tuesday or Wednesday, February 7 or 8, of the present month, in the United States marshal's office at Pensacola?—A. I did, on Wednesday, the 8th.

Q. Who else was present, if anyone, at that conversation?—A. R. P. Wharton, deputy marshal.

Q. Did, or did not, Mr. McLellan say to you at that time, in substance and effect, that when he took his account as a reporter for the newspaper of the contempt proceedings he was looking the greater part of the time at his notes and the defendant, Mr. Davis, and that he was not certain whether Judge Swayne said that Davis and Belden were a stench in the nostrils of the people or that their conduct was such?—A. He used such language as that in substance.

Mr. THURSTON. That is all.

The PRESIDING OFFICER. Call the next witness.

Mr. THURSTON. Call Percy S. Hayes.

PERCY S. HAYES, sworn.

Mr. THURSTON. With the permission of the Senate, I will excuse this witness for a few moments. I do not seem to have at hand a paper that I wish to identify by him. I will call him a little later. Call Mr. Greenhut in place of this witness.

ADOLPH GREENHUT, sworn and examined.

By Mr. THURSTON:

Q. Where do you live?—A. Pensacola, Fla.

Q. Are you the Greenhut who was a witness in the contempt proceeding against Mr. O'Neal in Judge Swayne's court?—A. I am, sir.

Q. And you are the party therein named who brought the complaint against Mr. O'Neal.—A. I am, sir.

Q. Will you please state to the Senate and show, so far as you can, the nature of the injuries that were inflicted upon you in that encounter with Mr. O'Neal?

Mr. Manager POWERS. Mr. President, I must object to that line of examination. There is before the court already a certified transcript of the court records, together with a certified transcript of all the testimony in that trial, including the full testimony of the present witness, so that all the testimony that was before the respondent at the time he sentenced O'Neal for contempt is in the record at the present time, and nothing else was offered, except the testimony of Mr. Blount, whom I called to ask him what authority—that is, what statutes and what decisions, were brought to the attention of the court at the time he argued his demurrer to the complaint of Mr. Greenhut. Now, it strikes me that there is no occasion to travel outside of that record. More than that, the question of the extent of the injuries growing out of the altercation between O'Neal and Greenhut was thoroughly gone into, not only by the witnesses to that affray, but also by the doctors in attendance; and it does not seem to me that it is competent at this time, in view of that phase of the case, to intro-

duce the character of testimony which the learned counsel is inquiring into.

Mr. THURSTON. Mr. President, I agree fully with the general proposition laid down by the distinguished manager, but I have no purpose to go into the transaction that was testified to in the court. I only am seeking now, because it is better evidence than can be secured in any other way, from a mere reading of the record, to show the exact character of the injuries this man received and the serious extent of the same.

Mr. Manager POWERS. I desire to say, in reply to that, that we do not in any way undertake to mitigate the serious injuries which grew out of the altercation. Our contest will be, when we come to argue that evidence, that it was a case in which the court had no jurisdiction, and that the respondent assumed jurisdiction without having jurisdiction. There is no question but that it was a serious altercation, and there is no question but that this witness was seriously injured in it.

Mr. THURSTON. Mr. President, on that statement by the manager I will discharge the witness.

EZRA P. AXTELL sworn and examined.

By Mr. THURSTON:

Q. Where do you reside?—A. Jacksonville, Fla.

Q. What is your profession?—A. I am a lawyer.

Q. How long have you been practicing law?—A. Since 1885.

Q. What professional relation did you hold toward the receivership of the Jacksonville, Tampa and Key West Railroad in 1893, and subsequently thereto?—A. I was his general attorney during the whole time that he was receiver of that property.

Q. Do you remember about what time it was that the limits of the northern judicial district of Florida were changed by act of Congress?—A. It was in the summer of 1894—in July, I believe.

Q. Jacksonville before that was in that district, was it?—A. It was in the northern district of Florida; yes, sir.

Q. And that part of the State including Jacksonville was taken away from the district?—A. Yes, sir.

Q. And attached to the southern district?—A. Yes, sir.

Q. Now, your receivership was begun before the district was changed, was it?—A. Yes, sir; in April, 1893.

Q. And did it continue down after the time of the change in the district?—A. Yes, sir; until some time in the year 1900—the receivership was discharged.

Q. After the change in the district was the jurisdiction or supervision of the receivership changed from the northern district of Florida, or Judge Swayne's district, to the southern district of Florida?—A. Yes, sir. All the property of the company was then in the southern district of Florida.

Q. What court, then, was it that passed upon the receiver's final accounts?—A. The circuit court of the southern district of Florida.

Q. How were the accounts of the receiver passed upon by the court—from time to time or at the end of the receivership?—A. In the year 1895 the judges of the circuit court of the fifth judicial circuit, including Justice White, of the Supreme Court of the United States, promulgated an order that receivers of property appointed by the Federal

courts in that circuit should file their reports in the clerk's office quarterly, and unless exceptions were taken to those reports within thirty days, they stood confirmed as of course.

Q. When was that order made?—A. That was made in the summer of 1895.

Q. Well, now, prior to that time, for the year 1893, how were the accounts passed upon—from time to time, or did they stand over for final review and approval?—A. Prior to that time masters in chancery were appointed to pass upon the accounts of the receivers as they were filed before the master. This order of which I speak did away with all standing masters, and these masters, prior to that time, passed upon the accounts of the receiver and his vouchers as they were filed with the master, and no order of the court was made until the final disposition of the case.

Q. Prior to the change in the district did Judge Swayne ever have before him for approval or disapproval, and did he ever prove or disapprove, any of the accounts of the receivership up to the time of the change of the district?—A. None, excepting in some particular instances where special permission was obtained of the court to do certain things and make certain improvements upon the property as to which the receiver deemed it necessary that he should obtain permission of the court before making any contract for.

Q. Then, as I understand you, the general accounts of that receivership up to the time of the change of the district were passed upon and approved by the judge of the southern district of Florida after the change in boundaries?—A. Yes, sir; in this way: Upon the promulgation of the order to which I referred the receiver was required to file up to that date his accounts, which he did; and no objection or exception being taken to them, they stood confirmed as a matter of course, without any special action of even the judge of the southern district of Florida.

Mr. THURSTON. That is all, I believe.

Cross-examined by Mr. Manager POWERS:

Q. Mr. Axtell, I think you acted as counsel for Judge Swayne in the hearing before the subcommittee of Congress when evidence was taken in Florida?—A. I did one day; yes, sir.

Q. Now, with reference to the expense of this private car. I understand that that expense was not passed upon by Judge Swayne in any approval of the receivers' accounts. Is that correct?—A. That is correct, sir.

Q. Can you state whether or not the expenses of that car from Guyencourt, Del., to Jacksonville, together with the expenses of running that car to California and return, ever appeared as such in any receiver's account?—A. I can not, sir.

Q. And can you tell the court whether or not the judge who passed upon the accounts, which included the expenses of operating that private car, had any knowledge that it had been used for the purpose for which it has been used?—A. I think I explained that no judge passed upon those accounts, because no exceptions were ever filed to them.

Q. And, so far as you know, no party in interest—that is, no creditor or no stockholder—had any knowledge of the expenses of operating the car in the way in which it has been testified it was operated?—A.

I know that the attorneys of the parties in interest knew that the car made those trips.

Q. Did they ever advise their clients of that knowledge?—A. I have not the slightest idea, sir.

Q. Well, now, as I understand, these accounts were filed and open for inspection for a given length of time?—A. Yes, sir.

Q. And after a certain length of time, nobody objecting, the accounts were approved?—A. Yes, sir.

Q. Can you tell the court whether or not the receiver, in making up those accounts, placed in a separate item of expense the use of this private car by Judge Swayne?—A. I can not, sir.

Q. Well, do you not know, as a matter of fact, that that expense was not disclosed in any of the receiver's reports?—A. I do not, sir. I assume that all the expenses of the receivership were disclosed in those reports.

Q. Did you have anything to do with making up those accounts?—A. I had to examine them, after they were made up, in a general way.

Q. Now, did you ever see a separate item for the expense of that private car as used by this respondent?—A. I did not, sir.

Q. And are you not satisfied that it did not appear?—A. Indeed, I do not know whether it did or not.

Q. Where are those accounts at the present time?—A. Those that are in existence are on file in the clerk's office of the circuit court at Jacksonville.

Q. Well, are they not all in existence at the present time?—A. So far as I know.

Mr. Manager POWERS. That is all.

Mr. THURSTON. That is all. Call Percy Hayes.

PERCY S. HAYES recalled.

By Mr. THURSTON:

Q. Where do you live?—A. Pensacola, Fla.

Q. What is your business?—A. Newspaper reporter.

Q. What was your business in November, 1901?—A. Newspaper reporter.

Q. Were you present in court at the time of the contempt proceedings on the 11th day of November, 1901, against Belden and Davis?—

A. Yes, sir.

Q. In what capacity were you there?—A. In the same capacity—newspaper reporter.

Q. Did you give careful attention, so as to secure a correct newspaper statement?—A. I did, sir.

Q. Did you do so, sir?—A. I did.

Q. Did you publish an account of that transaction there the next morning?—A. I did, sir.

Q. In what paper?—A. The Pensacola Journal.

Q. (Handing paper to witness.) I will ask you if this is a copy of it?—A. Shall I read this entire article?

Q. No. I just ask you if that is a true copy of that article as prepared by you and furnished your paper and published in it?—A. Without reading the entire article I think it is.

Q. Well, now, will you read it through and tell me as to whether or not that is a fair report and statement of what took place at the trial?—A. All right, I will read it through.

Mr. Manager POWERS. Mr. President, if the purpose of having the witness read that article is to introduce it in evidence we certainly must object. If I understand the rule of evidence correctly, the witness may look over the article and use it for the purpose of refreshing his recollection with a view to testifying, independent of the article, except so far as it refreshes his recollection of what took place at that trial, but I did not suppose that he could read over the article and then that the article could be put in evidence as a fair account of what took place.

The PRESIDING OFFICER. The managers make no objection to the article being put in evidence, as the Presiding Officer understands.

Mr. Manager POWERS. We certainly do make objection to the article being put in evidence. We do not object to the witness using the article to refresh his recollection for the purpose of testifying as to what took place.

The PRESIDING OFFICER. An article in another newspaper was put in evidence by the managers.

Mr. Manager POWERS. Yes; but that was upon entirely a different ground, I imagine. It was put in evidence because there was testimony that the article had been approved by the respondent, had been submitted to Judge Swayne, and by him revised and published, so that it came in the nature of an admission from the respondent. I do not understand that the circumstances surrounding this article are of that character at all.

Mr. THURSTON. Mr. President, I would suggest that if the honorable managers would wait until we made some offer before making objections they might not lose so much time in the trial. We have not offered anything yet.

The PRESIDING OFFICER. The Presiding Officer understands that the objection was to the witness reading the article in order to testify.

Mr. Manager POWERS. No.

Mr. THURSTON. No.

The PRESIDING OFFICER. The Presiding Officer understood that the objection was to the reading of the article, and then having it introduced in evidence.

Mr. Manager POWERS. We made no objection to the witness, Mr. President, reading the article. We understood the offer on the part of the learned counsel was to have him read the article and then to produce the article in evidence. I feel quite confident that that was his proposal at the time he asked the question.

Mr. THURSTON. I ask that the reporter read the question.

The reporter read as follows:

Q. Well, now, will you read it through and tell me as to whether or not that is a fair report and statement of what took place at the trial?

Mr. THURSTON. It will be very clearly seen that I have made no offer of this paper. There was nothing to object to, and all this time has been thrown away because of their anxiety to anticipate what I might do.

The PRESIDING OFFICER. What is now the question?

Mr. THURSTON. I will ask another question.

Mr. Manager POWERS. The witness has not answered the previous question.

Mr. THURSTON. No; he has not answered that question.

Mr. Manager CLAYTON. We object to it.

Mr. THURSTON. I withdraw that question to save time. [To the witness.] Have you now read this article?

A. Yes, sir; I have.

Q. After reading it is your recollection refreshed as to what took place at that trial?—A. Yes, sir; to a certain extent.

Q. Where were you sitting in the court at the time Judge Swayne delivered his opinion?—A. To the best of my recollection I was leaning against the desk of the clerk—Clerk Marsh. I was not sitting anywhere.

Q. Will you please state, as nearly as you can, in substance, what the judge said at that time?—A. The judge, in passing sentence, if that is what you refer to—

Mr. THURSTON. That is what I refer to.

A. The judge, in passing sentence, stated it was one of the most painful duties he had been called upon to perform during his incumbency of the bench; that owing to the age of one of the prisoners or the defendants he regretted it very much; that the conduct, though, of the attorneys was a disgrace to the community. What else he said I do not remember.

Q. (By Mr. THURSTON.) What was his appearance and manner in the delivery of that sentence?—A. That of a judge presiding upon the bench.

Q. Did he exhibit any evidences of anger?—A. I did not notice it, sir, if he did.

Mr. THURSTON. I think that is all.

The PRESIDING OFFICER (to the managers on the part of the House). Inquire.

Mr. Manager PALMER. We have no questions.

Mr. THURSTON. I now offer a certified copy of the opinion rendered by Judge Pardee, circuit judge of the fifth circuit, in the matter of the writ of habeas corpus ex parte Davis and Belden. I will not ask to have it read, but will ask that it may go into the Record.

Mr. Manager PALMER. All right.

The PRESIDING OFFICER. It will be printed in the Record without reading, unless there is a request that it be read on the part of the managers or of some Senator.

The opinion referred to is as follows:

United States circuit court, fifth judicial circuit. Proceedings before Don A. Pardee, circuit judge, in chambers. Ex parte Ezra T. Davis. Writ of habeas corpus.

The petition setting forth the commitment and detention of the relator charges that his detention is illegal on the following grounds:

- "1. That the commitment under which your petitioner is held is illegal and void.
- "2. That the court was without jurisdiction or power to sentence your petitioner in the premises.
- "3. That the motion upon which the proceedings were had was not sworn to or verified.
- "4. That the said motion does not charge petitioner with contempt either directly or by implication.
- "5. Because by the said motion it appears that petitioner only did that which he was authorized to do as an attorney at law in behalf of his clients.
- "6. Because there is no allegation that the acts done by him as alleged in said motion were done wrongfully or with improper motives.
- "7. Because the commitment is irregular in that it is not directed to the keeper of the county jail of Escambia County, but only to the United States marshal for the northern district of Florida.

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"8. Because the said commitment does not set forth such acts of petitioner as in law amount to contempts of court.

"9. Because it appears therefrom that the said court has punished as a contempt an act of petitioner, which in law is not contempt.

"10. Because the facts set forth in said commitment do not constitute a contempt of court.

"11. Because the acts of petitioner set forth and related in said commitment were legal and proper.

"12. Because it is not alleged in said commitment that the acts of petitioner were contrary to right.

"13. Because it does affirmatively appear that the acts set forth in said commitment, and that the said court were to be contempt, were done and performed by petitioner in the proper and just discharge of his duty as an attorney at law.

"14. Because it is not alleged in said motion or commitment that the action of petitioner tended in its operation to degrade or make impotent the authority of the court.

"15. Because it is not alleged in said motion or commitment that the action of petitioner tended in any manner to impede or embarrass the due administration of justice.

"16. Because there is no allegation in said motion or commitment that petitioner intentionally committed the said alleged contempt.

"17. Because from the motion filed it is apparent that no contempt was intended."

The writ having issued, the keeper of the prison makes return that he holds the relator by virtue of the following commitment:

United States of America, circuit court of the United States, fifth circuit, northern district of Florida.

The President of the United States to the marshal of the United States for the northern district of Florida, greeting:

Whereas at a session of the circuit court of the United States for the fifth circuit and northern district of Florida, held at the city of Pensacola, in said circuit and district, on the eleventh day of November, A. D. 1901, a rule to show cause why he should not be punished for contempt of the said court was duly made and entered by the said court against Ezra T. Davis for causing and procuring, as attorneys of the circuit court of Escambia County, Florida, a summons in ejectment, wherein Florida McGuire was plaintiff and the Honorable Charles Swayne was defendant, to be issued from the said court and served upon the said judge of this court, to recover the possession of block 91, Cheveaux tract, in the city of Pensacola, Florida, a tract of land involved a controversy in ejectment then depending in the said circuit court of the United States in a case wherein the said Florida McGuire was plaintiff and the Pensacola City Company and others were defendants, upon the grounds:

1. That the said suit in ejectment against the judge of this court was instituted after a petition to this judge to recuse himself in the said case of Florida McGuire v. The Pensacola City Company and others had been submitted to the court on November 5th, 1901, and denied, and after the said judge had said in open court, and in the presence of the said , that the allegation of the said petition that he, or some member of his family, were interested in or owned property in said tract was untrue, and had stated that he had refused to permit member of his family to buy land in said tract because the said suit by Florida McGuire, involving the title to said tract, was in litigation before him, the said judge.

2. That after the said declaration of the said judge the said counsel were aware that neither the said judge nor any member of his family were the owners of or interested in any part whatever of the said tract, and had no reason to believe that he or they were so interested, and knew, or could easily have known, that the said block was not in the possession or control of anyone, but was entirely unoccupied.

3. That the said suit was instituted against the said judge on Saturday night, the 9th instant, after 6 o'clock, and after the court had overruled the motion of said attorneys to postpone the trial of the said cause of Florida McGuire v. Pensacola City Company and others for a week or more and after the said judge had announced to the counsel aforesaid that he would call the case for trial on Monday, November 11, 1901, and would then try the case unless counsel for plaintiff made a showing why he should not so try, and the said counsel had announced that they would make such showing.

4. That the said E. T. Davis was, before the institution of the said suit against the said judge, cognizant of all the facts herein set forth.

Which charges were in violation of the dignity and good order of the said court and a contempt thereof.

And afterwards, to wit, on the 12th day of November, A. D. 1901, the said defendant

having been duly served with an order to show cause why he should not be punished for the alleged contempt aforesaid, which order was returnable at said time, was duly tried by the court upon his answer and the evidence of witnesses, on the charges aforesaid in the said rule preferred, and a verdict of guilty was duly rendered by the said court against the said defendant, Ezra T. Davis.

And afterwards, on the same day, our said court, by reason of the verdict aforesaid of the said court, did duly sentence the said Ezra T. Davis to be imprisoned in the county jail of Escambia County, in the State of Florida, for and during the term and period of ten days from the 12th day of November, A. D. 1901, and further to pay a fine or penalty to the United States Government of \$100, and that he stand committed until the term of said sentence be complied with or until he be discharged by due course of law.

The said jail being the place duly selected for the imprisonment of persons convicted of offences against the laws of the United States in the courts thereof in said northern district of Florida.

Now, therefore, you, the said marshal, are hereby commanded forthwith to convey to the said jail at Pensacola, in the State of Florida, the body of the said Ezra T. Davis, and deliver him to the keeper thereof.

And you, the said keeper, in the name of the President of the United States of America, are hereby commanded to receive the body of the said Ezra T. Davis, the person aforesaid, into your custody, and him, the said Ezra T. Davis, keep in the said jail of Escambia County, in the State of Florida, at Pensacola, for the full term and period of ten days from the 12th day of November, 1901, and until the said fine of one hundred dollars be paid, or until he be discharged by due course of law.

Herein fail not at your peril; and make due return of what you shall do in the premises and of this writ.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the seal of this court at the city of Pensacola, in said district, this 12th day of November, A. D. 1901.

F. W. MARSH, Clerk.

This case was submitted on the record and argued by Mr. A. J. Murphy for relator and W. A. Blount, contra.

PARDEE, circuit judge.

Section 725 of the Revised Statutes of the United States reads as follows:

"The said courts shall have power to impose and administer all necessary oaths, and to punish, by fine or imprisonment, at the discretion of the court, contempts of their authority: *Provided*, That such power to punish contempts shall not be construed to extend to any cases except the misbehavior of any person in their presence, or so near thereto as to obstruct the administration of justice, the misbehavior of any of the officers of said courts in their official transactions, and the disobedience or resistance by any such officer, or by any party, juror, witness, or other person, to any lawful writ, process, order, rule, decree, or command of the said courts."

The relator is an attorney and counselor of the United States circuit court for the northern district of Florida, and as such one of the officers of the court within the intent and meaning of the above statute. As such officer, he was and is charged with conduct in and out of court, which, if accompanied with malicious intent, or had the effect to embarrass and obstruct the administration of justice, was such misbehavior as amounted to contempt of court. To hear and decide whether the relator was guilty of such contempt, and if found guilty to punish him for such conduct, was clearly within the jurisdiction of the court, and the court having exercised such jurisdiction and found the relator guilty of contempt, its finding against the relator can not be reviewed on habeas corpus. (In re Swan, 150 U. S., 637.)

In *United States v. Pridgeon* (153 U. S., 48, 62), the court says:

"Under a writ of habeas corpus the inquiry is addressed not to errors, but to the question whether the proceedings and the judgment rendered therein are, for any reason, nullities, and unless it is affirmatively shown that the judgment or sentence under which the petitioner is confined is void, he is not entitled to his discharge."

The court having adjudged the relator in contempt, proceeded to sentence him to imprisonment in the county jail for a period of ten days and to pay a fine of \$100.

It is conceded that this sentence is beyond the jurisdiction of the court, which, under section 725 above quoted, is limited to power to imprison or to fine, but not both. But the question is whether the relator can complain of this sentence until he has performed that part which the court had power to impose. The court had power to impose a sentence of imprisonment in the county jail for ten days; also had power to impose a fine of \$100. Is the relator injured until he has either suffered the imprisonment or paid the fine?

The question has been somewhat considered in the Supreme Court. In *Ex parte Swan* (supra) the court says:

"It is further contended that the court exceeded its power in that the payment of costs was required, because the costs were in the nature of a fine, and therefore the punishment inflicted was both fine and imprisonment. Under section 970 of the Revised Statutes, when judgment is rendered against a defendant in a prosecution for any fine or forfeiture, he shall be subject to the payment of costs, and on every conviction for any other offense not capital, the court may, in its discretion, award that the defendant shall pay the costs of the prosecution; and as contempt of court is a specific criminal offense, it is said that the judgment for payment of costs would appear to be within the power of the court, although by section 725 it is provided that contempts of the authority of courts of the United States may be punished 'by fine or imprisonment, at the discretion of the court.'

"But be that as it may, the sentence here was that the petitioner be imprisoned 'until he returns to the custody of the receiver the barrel taken by him from the warehouse without warrant of law. And when that has been surrendered, that he suffer a further imprisonment thereafter in said county jail for three months and until he pay the costs of these proceedings.' As the prisoner has neither restored the goods nor suffered the imprisonment for three months, even if it was not within the power of the court to require payment of costs and its judgment to that extent exceeded its authority, yet he can not be discharged on habeas corpus until he has performed so much of the judgment or served out so much of the sentence as it was within the power of the court to impose." (*Ex parte Lange*, 18 Wall., 163; *Ex parte Parks*, 93 U. S., 18.)

In *Ex parte Pridgeon* the court says:

"It may often occur that the sentence imposed may be valid in part and void in part, but the void portion of the judgment or sentence should not necessarily, or generally, vitiate the valid portion. (Rev. Stat., sec. 761.) 'The court, or justice, or judge shall proceed in a summary way to determine the facts of the case (in habeas corpus) by hearing the testimony and arguments, and thereupon to dispose of the party as law and justice require.' There is no law or justice in giving to a prisoner relief under habeas corpus that is equivalent to an acquittal, when, upon writ of error, he could only have secured relief from that portion of the sentence which was void. In the present case the five years' term of imprisonment to which Pridgeon was sentenced can not properly be held void because of the additional imposition of 'hard labor' during his confinement.

"Thus, In *re Swan* (150 U. S., 553, 637), it is stated that, even if it was not within the power of the court to require payment of costs, and its judgment to that extent exceeded its authority, yet he can not be discharged on habeas corpus until he has performed so much of the judgment or served out so much of the sentence as it was within the power of the court to impose."

Considering these authorities and that this writ is sued out and is returned before one of the judges of the circuit court for the northern district of Florida, it would seem to be proper to discharge this writ, leaving the relator to elect whether he will pay the fine or suffer the imprisonment, and then to seek relief from the balance of the sentence. Another course to follow would be to adjudge the sentence imposed to be beyond the law and remand the relator to the circuit court of the northern district of Florida to be sentenced within the law for the contempt of which he has been adjudged guilty.

The case shows that the relator has suffered some portion of the sentence of imprisonment for this reason, and under all the circumstances of the case I deem it best, and the relator can not complain, to hold that when the relator shall have satisfied either the imprisonment or fine adjudged against him he will be entitled to his discharge.

For these reasons the writ of habeas corpus herein sued out is discharged.

Circuit Judges McCormick and Shelby heard the argument in this case and concur in this opinion.

DON A. PARDEE, *Circuit Judge*.

United States fifth judicial circuit. Proceedings before Don. A. Pardee, circuit judge, in chambers, New Orleans, La. *Ex parte* Elsa T. Davis, *Ex parte* Simeon Belden. On writs of habeas corpus.

Writs of habeas corpus in favor of the above-named relators having issued on the order of the undersigned circuit judge, returnable in chambers in the city of New Orleans, and returns having been made to the said writs, and the issue presented having been argued—

It is now, for the reasons herewith filed, ordered and adjudged that the said writs be discharged, and that the relators be remanded to the custody of the jail keeper of Escambia County, Fla., holding for the marshal for the northern district of Florida, at Pensacola.

And the said relators, pending proceedings on above-mentioned writs, have been enlarged upon bonds conditioned upon their appearance and to obey orders issued.

It is ordered that they surrender themselves to said jailer, or said marshal, on or before noon of Monday, the 9th day of December, 1901.

The costs of these proceedings to be paid by said relators.
December 7, 1901.

DON. A. PARDEE, *Circuit Judge.*

UNITED STATES OF AMERICA, *Northern district of Florida.*

I, F. W. Marsh, clerk of the circuit court of the United States for the northern district of Florida, hereby certify that the foregoing is a true and correct copy of an original paper or document filed in the cause therein specified in said court on the day therein set forth, as the same remains of record and on file in said court.

Witness my hand and the seal of said court at the city of Pensacola, in said district, this 3d day of February, A. D. 1905.

[SEAL.]

F. W. MARSH, *Clerk.*

Mr. THURSTON. I also offer the opinion of Judge Pardee in the case of O'Neal, and will ask that it may go into the record without being read.

The PRESIDING OFFICER. If there is no objection, it will be printed in the Record without being read.

The opinion referred to is as follows:

United States circuit court, fifth judicial circuit, northern district of Florida. Ex parte W. C. O'Neal. Habeas corpus.

The petitioner, W. C. O'Neal, was convicted in the district court for the northern district of Florida on a charge of contempt of court in committing an assault upon an officer of said court, and thereupon was sentenced to imprisonment in the county jail at Pensacola, Fla., for the term of sixty days. This conviction was immediately followed by a writ of error to the Supreme Court of the United States, based on a certified question as to jurisdiction. In dismissing the writ of error the Supreme Court said:

"Jurisdiction over the person and jurisdiction over the subject-matter of contempts were not challenged. The charge was the commission of an assault on an officer of the court for the purpose of preventing the discharge of his duties as such officer, and the contention was that on the facts no case of contempt was made out.

"In other words, the contention was addressed to the merits of the case and not to the jurisdiction of the court. An erroneous conclusion in that regard can only be reviewed on appeal or error, or in such appropriate way as may be provided." (*Louisville Trust Company v. Cominger*, 184 U. S., 18, 26; *Ex parte Gordon*, 104 U. S., 515.)

"And while proceedings in contempt may be said to be *sui generis*, the present judgment is in effect a judgment in a criminal case, over which this court has no jurisdiction on error." (Section 5, act of March 3, 1891, 26 Stat. L., 826, ch. 517, as amended by the act of January 20, 1897, 29 Stat. L., 492, ch. 68; *Chetwood's case*, 165 U. S., 443, 462; *Tinsley v. Anderson*, 171 U. S., 101, 105; *Cary Manufacturing Company v. Acme Flexible Clasp Company*, 187 U. S., 427, 428; 190 U. S., 37, 38.)

The case is here presented upon the record proper as submitted to the Supreme Court and upon a further showing of alleged facts, which petitioner claims do not contradict the record, to wit:

"That the place at which took place on the morning of October 20th, 1902, the affray between A. Greenhut and petitioner, in which is alleged to have occurred the assault by petitioner upon the said A. Greenhut for which the district court has sentenced petitioner as for a contempt, was the office in the store of the said A. Greenhut, and was a part of the building occupied by him as a wholesale grocery store, and that his office was used by him for the purpose of conducting the said grocery business, and was used in connection with his position as trustee only because it was his place of business, and therefore more convenient for him. That the said building was

at said time, and is now, No. 104 East Government street, in the city of Pensacola, and distant from the United States court room and the building in which it was and is held not less than four hundred feet, and separated therefrom by an intervening street and an intervening alley, and by more than a block of brick business houses, and was not in any way connected with, or used in connection with, the said court or court-house or any of the functions or duties of the said court or of the judge thereof. That the said district court was not in session in the city of Pensacola on the said 20th day of October, nor had been for months before the said date, and that no session thereof occurred thereafter until November 7th, 1902, and that the judge of said court was not on the date in said State, nor had been therein for months prior thereto, nor did he come therein until the 6th day of November, A. D. 1902."

As to claimed authority to supplement record as to facts, see *In re Cuddy* (131 U. S., 280).

In my opinion the additional facts offered to supplement the record do not materially change the status of the case nor do they in any wise extend the jurisdiction of this court upon this writ.

The charge of contempt against the relator is based upon the fact that he unlawfully assaulted and resisted an officer of the district court in the execution of orders of the court and in the performance of the duties of his office under such orders, and in that respect it would seem to be immaterial whether at the time of the resistance the court was actually in session, with a judge present in the district, and whether the place of resistance was 40 or 400 feet from the actual place where the court was usually held, so long as it was not in the actual presence of the court, nor so near thereto as to embarrass the administration of justice.

Under the bankruptcy act of 1898, section 2, the district courts of the United States, sitting in bankruptcy, are continuously open; and under section 33 and others of the same act a trustee in bankruptcy is an officer of the court. The questions before the district court in the contempt proceedings were whether or not an assault upon an officer of the court, to wit: A trustee in bankruptcy for and on account of and in resistance of the performance of the duties of such trustee had been committed by the relator, and, if so, was it under the facts proven a contempt of the court whose officer the trustee was?

Unquestionably the district court had jurisdiction summarily to try and determine these questions, and having such jurisdiction, said court was fully authorized to hear and decide and adjudge upon the merits. (*In re Savin*, 131 U. S., 267, 276, 277.)

This brings us squarely to the question whether, upon this writ of habeas corpus, the inquiry can be extended by this court so as to review, as upon writ of error, any irregularities of the district court in the proceedings or to determine as upon appeal the real merits of the case.

I have examined with care the decisions of the Supreme Court of the United States in *re Cuddy* (131 U. S., 280); *ex parte Mayfield* (141 U. S., 116), and in *re Sachs & Watts* (190 U. S., 1), and in many other cases, and do not find that either or any of them control or determine the question in favor of such claimed jurisdiction.

Whatever an appellate court may have power to do in regard to supplementing the record, as held in *re Cuddy* and in *ex parte Mayfield*, or upon certiorari and habeas corpus to examine the merits of the case, as in *re Sachs & Watts*, I am forced to follow, as I did in *ex parte Davis* (112 Fed. Rep., 139), the Supreme Court in *United States v. Pridgeon* (153 U. S., 18, 62), wherein it is declared:

"Under a writ of habeas corpus the inquiry is addressed, not to errors, but to the question whether the proceedings and the judgment rendered therein are for any reason nullities, and, unless it is affirmatively shown that the judgment or sentence under which the petitioner is confined is void, he is not entitled to his discharge."

This court has no appellate jurisdiction over the district court for this district, and if it should attempt to go beyond the rule declared in *United States v. Pridgeon* and assume authority to look into the merits wherein judgments have been rendered in the district court in contempt cases it would be, from my standpoint, an unwarranted assumption of jurisdiction decidedly, tending to scandal in judicial proceedings.

In dealing with the proceedings against petitioner in the district court, the Supreme Court said that an erroneous conclusion in regard to the merits can only be reviewed on appeal or error or in such appropriate way as may be provided. As shown above the writ of habeas corpus is not an appropriate way provided.

The Supreme Court further said that the judgment in this present case is in effect a judgment in a criminal case, which that court had no jurisdiction on error. The court did not say that no other appellate court had jurisdiction on error.

In *In re Paquet* (114 Fed. Rep., 437) the circuit court of appeals in this circuit held that that court had no jurisdiction to issue a writ of prohibition in a certain contempt case then pending in the circuit court of the northern district of Florida,

but intimated that possibly a writ of error might lie in such cases where final judgment of conviction had been rendered; but whether the petitioner here has or had a remedy by writ of error from or by appeal to any appellate court is immaterial on this inquiry, and I am satisfied that this court has no jurisdiction to review the petitioner's case by any remedy provided by law.

The writ of habeas corpus is discharged.

Circuit Judges McCormick and Shelby sat with me and heard argument in this case, and they concur in this opinion.

DON. A. PARDEE, *Circuit Judge*.

NOVEMBER 10, 1903.

(Indorsed: Law No. 80. Ex parte W. C. O'Neal. Habeas corpus. Opinion and order discharging writ. Filed by order of court as of November 10th, 1903. F. W. Marsh, clerk.)

UNITED STATES OF AMERICA, *Northern District of Florida*:

I, F. W. Marsh, clerk of the circuit court of the United States for the northern district of Florida, hereby certify that the foregoing is a true and correct copy of an original paper or document filed in the cause therein specified in said court on the day therein set forth, as the same remains of record and on file in said court.

Witness my hand and the seal of said court at the city of Pensacola, in said district, this 3d day of February, A. D. 1905.

[SEAL.]

F. W. MARSH, *Clerk*.

Mr. THURSTON. I offer the complete record under certificate in the case of Florida McGuire v. Charles Swayne in the circuit court of Escambia County, Fla., and suggest that it may be printed in the Record without being read.

The PRESIDING OFFICER. Is there objection on the part of the managers?

Mr. Manager PALMER. No, sir.

The PRESIDING OFFICER. If there is no objection on the part of Senators it will be printed in the Record without being read.

The record referred to is as follows:

Summons in ejectment. The State of Florida, Escambia County, ss. Circuit court.

To the sheriff of said county, greeting:

We command you that you summon Charles Swayne to be and appear before the honorable judge of our circuit court for the county of Escambia at a court to be holden in the court-house in Pensacola on the first Monday, being rule day, and the 2d day of December next, to answer the complaint of Florida McGuire in an action of ejectment. Damages claimed, \$1,000.00. This you shall in no wise omit, under penalty of the law; and have then and there this writ, with your proceedings indorsed thereon.

Witness, A. M. McMillan, clerk of our said court, at the court-house aforesaid, this 9th day of November, A. D. 1901.

A. M. McMILLAN,
Clerk Circuit Court.

By B. H. BURTON, *D. C.*

[OFFICIAL SEAL.]

(Endorsement:) In circuit court, Escambia County, Fla. Florida McGuire v. Charles Swayne. Summons in ejectment. Filed Nov. 11, 1901. A. M. McMillan, clerk circuit court. Simeon Belden, Louis P. Paquet, E. T. Davis, attorneys for plaintiff.

Came to hand this 9th day of November, A. D. 1901, and executed this 9th day of November, A. D. 1901, by delivering a copy hereof to the within-named Charles Swayne, defendant.

GEO. E. SMITH, *Sheriff*.
DAN MURPHY, *Deputy Sheriff*.

Description of the property sued for is as follows: Block No. 91, in the Gabriel Rivers tract, in section 8, township 2 south, range 29 west, in the city of Pensacola, Escambia County, Fla., according to map of said city by Thos. C. Watson, copyrighted in 1884.

Plaintiffs claim of defendant, \$—— mesne profits.

454 SWAYNE IMPEACHMENT PROCEEDINGS IN THE SENATE.

In Escambia County circuit court, State of Florida. Florida McGuire v. Charles Swayne.

Please enter my appearance for the defendant in the above-stated case.

JNO. C. AVERY,
Attorney for Defendant.

(Endorsed:) Filed Dec. 2, 1901. A. M. McMillan, clerk circuit court.

In Escambia County circuit court, State of Florida. Florida McGuire v. Charles Swayne.

And now comes the said defendant and says: That he never was in possession of the said property, or any part thereof; never had any interest therein, or claimed any title thereto, and prays to be hence dismissed with costs.

JNO. C. AVERY,
Attorney for Defendant.

Charles Swayne, being duly sworn, says that the allegations of the foregoing disclaimer are true.

CHAS. SWAYNE.

Sworn to and subscribed before me this 2d day of January, A. D. 1902.

[NOTARIAL SEAL.]

E. R. BURGOYNE, *Notary Public.*

(Indorsed:) Filed January 6, 1902. A. M. McMillan, clerk circuit court.

STATE OF FLORIDA, *County of Escambia:*

I, A. M. McMillan, clerk circuit court in and for said State and county, do hereby certify that the foregoing pages contain a true and correct copy of the original summons and service thereof, appearance and disclaimer in said case, as remains of record in the public records of said county in my office.

In testimony whereof I have hereunto set my hand and affixed my seal official this 22d day of December, A. D. 1904.

[SEAL.]

A. M. McMILLAN,
Clerk Circuit Court.

STATE OF FLORIDA, *County of Escambia:*

I, A. M. McMillan, clerk circuit court in and for said State and county, do hereby certify that præcipe in case of Florida McGuire v. Chas. Swayne was filed on the 9th day of November, A. D. 1901, as shown by entry on progress docket in said case, but that said paper is not now on file in the public records of said county in my office.

In testimony whereof I have hereunto set my hand and affixed my seal official this 22d day of December, A. D. 1904.

[SEAL.]

A. M. McMILLAN,
Clerk Circuit Court.

STATE OF FLORIDA, *County of Escambia, ss:*

I, Charles B. Parkhill, judge of the circuit court of the State of Florida in and for the first judicial circuit, and as judge of the circuit court of Escambia County, in said State, do hereby certify that the attestation of A. M. McMillan, clerk of the circuit court in and for the said State and county, to the transcript of record in proceedings to which this certificate is attached, is in due form.

In witness whereof I have hereunto set my hand at the city of Pensacola, in the said State and county, this 9th day of February, A. D. 1905.

CHARLES B. PARKHILL,
*Judge Circuit Court First Judicial Circuit and in and for
Escambia County, State of Florida.*

Mr. THURSTON. I now offer so much of the record in the Florida McGuire case as contains the declaration in which is set forth a description of the property involved in that suit.

The PRESIDING OFFICER. Is it necessary to read it?

Mr. THURSTON. No.

Mr. Manager PALMER. Allow me to see that, please? [After examining.] That is all right.

Mr. THURSTON. It may go in without being read.

The extract referred to is as follows:

The said defendants are in possession of a certain tract or parcel of land, situate, lying, and being in the county of Escambia, State of Florida, known and described as follows:

A certain parcel of land known as the "Gabriel Rivas" tract, containing about 262½ acres, more or less, in the eastern portion of the city of Pensacola, Escambia County, State of Florida, mostly in section 8 south, range 29 west, forming a lot of 300 superficial arpents, according to a figurative plan of the survey from the mouth of the rivulet, as the extreme east of this population according to the plan thereof, and is bound northerly and westerly by vacant lands. Southerly it confines with the Bay of Pensacola and easterly with the rivulet of the Texar, its most westerly limit being north of the compass with a declination of 7° 50' to the northeast, as shown by the original Spanish grant to Gabriel Rivas, the 10th day of November, 1806, and registered in book 7, folio 16, No. 1793, said property being as aforesaid situate in the county of Escambia, State of Florida, to which said plaintiffs claim title, and the defendants have received the profits of the said lands since, etc.

Mr. THURSTON. I also offer a certified copy of the petition to the United States circuit court for the northern district of Florida, of Florida McGuire and Matilda Caro, plaintiffs in the case that was rebrought after the dismissal of the Florida McGuire case, asking the judge to recuse himself on the trial. It is duly certified.

Mr. Manager PALMER. What is the purpose of that, Mr. President? I do not know that I object to it, but I would just like to know what it is.

Mr. THURSTON. It is to show certain statements contained in it as to what Mr. Belden and Mr. Davis say that Judge Swayne had said on the previous trial in passing upon the question of recusing himself.

Mr. Manager PALMER. I shall not object to that if they will put in evidence all that pertains to that particular matter. If they will put in the petition and the ruling of the judge and the statement he made on the record and the affidavit of Mr. Hooton—all that pertains to that matter—I shall not object. Otherwise I do object.

Mr. THURSTON. I have here only this part which I offer now. We are not required to put in the whole record.

Mr. Manager PALMER. This is not the whole record, and they can not put in a piece of the record.

Mr. HIGGINS. The managers can offer what they see fit of the record.

The PRESIDING OFFICER. Precisely what is the paper counsel offer?

Mr. THURSTON. It is a petition signed by Belden and Davis in the second Florida McGuire case asking Judge Swayne to recuse himself.

The PRESIDING OFFICER. The case that was brought after the contempt proceedings?

Mr. THURSTON. Yes, Mr. President, a subsequent statement of Belden and Davis which was identified on the examination of one of them. It gives a statement of their understanding of what Judge Swayne had said at the former trial or at the term of the court concerning this matter, which is inconsistent with the testimony they have given on the witness stand.

The PRESIDING OFFICER. If it is offered for the purpose of contradicting the witness, the Presiding Officer thinks it may be admissible. Otherwise he can not see for what purpose it would be admissible.

Mr. THURSTON. That is the purpose.

Mr. Manager PALMER. I should like to have the particular portion pointed out that the learned counsel contend contradicts the statements of the witness.

Mr. THURSTON. I can do that if it is the desire of the Senate that I should read the petition and make an argument as to what part contradicts their statement.

Mr. Manager PALMER. I do not ask that, but I want to know what contradicts the witness, so that we will know what the purpose is.

Mr. THURSTON. I simply state that in the opinion of counsel we think there are inconsistent statements in it which we may desire to use on argument.

Mr. Manager PALMER. I think we are entitled to have pointed out the inconsistent statement which he claims is in the paper, and if there is an inconsistent statement there, I suppose, according to the opinion of the Presiding Officer, it would be evidence to contradict; but if there is no such statement, I do not think it would be admissible.

Mr. THURSTON. If there are not any inconsistent statements, it can not do the gentleman any harm.

Mr. Manager PALMER. Or you any good

The PRESIDING OFFICER. The Presiding Officer thinks the paper may be admitted; but if, upon examination, it turns out that there are no statements in the paper inconsistent with the testimony which the witnesses have given here, it can be stricken from the record.

The petition referred to is as follows:

United States circuit court, fifth judicial circuit of Florida. Florida McGuire and Matilda Caro v. William Blount et als.

To the Hon. CHARLES SWAYNE,

*Judge of the United States Circuit Court,
Fifth Judicial Circuit for the Northern District of Florida:*

The petition of Mrs. (widow) Florida McGuire and Matilda Caro, plaintiffs, in above-entitled and numbered suit, respectfully represents that the honorable judge of this court should recuse himself in this cause for the following grounds and reasons:

That in February, 1901, your petitioner, Mrs. Florida McGuire, filed in this court a suit for the same property at issue in this cause against the Pensacola City Company et als., asserting the same rights of ownership as herein; that pending said suit Mrs. Lydia C. Swayne, wife of the honorable judge of this court, made a contract to buy and did buy a portion of the property at issue in that and this cause from Charles H. Edgar, through T. C. Watson & Co., of Pensacola, agents; that your honor on the 12th of November, 1901, stated from the bench in open court that your wife, Mrs. Lydia C. Swayne, with her own money had negotiated or agreed to buy said property, but that when you saw said deed was a quitclaim deed and comprised a portion of the Rivas tract property in litigation before you, you returned said deed to the said vendor.

That it does not appear that the said Mrs. Lydia C. Swayne ever consented to the return of said deed, and the said vendor, Charles H. Edgar, has still the right to sue said lady to accept said deed and title, and the said Mrs. Lydia C. Swayne having a present or potential interest in aforesaid property, and being so nearly and closely related to the honorable judge of this court, said interest or potential interest we respectfully submit requires your honor to recuse yourself herein. That your petitioners desire to take the testimony of witnesses, in order that any ruling of the court either for or against this formal application should be made of record in this cause. Wherefore petitioners pray that they be allowed to file this petition that you recuse yourself in this cause, and call in another Federal judge to try this cause according to law, all of which is respectfully submitted.

SIMMON BELDEN,
E. T. DAVIS,
JAMES WILKINSON,
Attorneys for Petitioner.

Order.

Let this petition be filed in this cause.

CHAS. SWAYNE, *Judge*.

MARCH 17, 1902.

(Indorsed: United States circuit court, fifth judicial circuit of Florida. Florida McGuire and Matilda Caro v. William Blount et al. Filed March 17, 1902. F. W. Marsh, clerk. Petition for recusation of Hon. Charles Swayne, judge.)

UNITED STATES OF AMERICA, *Northern district of Florida*:

I, F. W. Marsh, clerk of the circuit court of the United States for the northern district of Florida, hereby certify that the foregoing is a true and correct copy of an original paper or document filed in the cause therein specified in said court, on the day therein set forth, as the same remains of record and on file in said court.

Witness my hand and the seal of said court at the city of Pensacola, in said district, this 1st day of February, A. D. 1905.

[SEAL.]

F. W. MARSH, *Clerk*.

MILTON JACKSON, affirmed and examined.

By Mr. HIGGINS:

- Q. Where do you reside?—A. Philadelphia.
- Q. Pennsylvania?—A. Yes, sir.
- Q. What is your occupation?—A. Manufacturer.
- Q. Of what?—A. Hardware.
- Q. Are you connected or have you any family connections with the respondent, Charles Swayne?—A. I am his brother-in-law.
- Q. Did you marry his sister?—A. I married his sister and he married a cousin of mine.
- Q. So it is a double connection. What year were you married?—A. In 1867.
- Q. Do you know in what year the respondent was married?—A. In the same year.
- Q. You are familiar, then, with the residence of his father and mother in what is now called Guyencourt, near Wilmington, Del.?—A. I am.
- Q. Will you state who is the present owner of that property?—A. His mother, Anne P. Swayne.
- Q. She has a life interest in it, I believe?—A. She has.
- Q. State what is her age?—A. She is in her eighty-seventh year, I think.
- Q. Are you familiar with the occupation of that property; do you know who has abided there—who has lived there?—A. I am.
- Q. I will ask you if your residence in Philadelphia since 1885 has been continuous or been broken?—A. It has been continuous.
- Q. You have been there all the time?—A. With the exception of occasional travel.
- Q. Yes. Your residence has been Philadelphia?—A. My residence has been Philadelphia.
- Q. Will you please state whether or not Charles Swayne has abided at this place of his parents in Guyencourt?
- Mr. Manager PERKINS. That we must object to. We do not object to the witness being asked what the respondent has done; how much he has been there; but to ask whether he abides there is a legal question.
- Q. (By Mr. HIGGINS.) Will you state the answer to the question, as now put by the learned manager, in your own way?
- Mr. Manager PERKINS. That is a good question.

A. Judge Swayne visited Guyencourt usually in the summer time, since he has been residing in Florida.

Q. Since he has been residing there? What year did that residence in Florida begin?

Mr. Manager PERKINS. I object to that. The witness can not state about that.

Mr. HIGGINS. You object to the answer?

Mr. Manager PERKINS. I object to the answer.

Mr. HIGGINS. My question is what time he moved to Florida—went to Florida to live.

The WITNESS. Twenty years ago.

Mr. HIGGINS. I mean when he first went.

Mr. Manager PERKINS. I do not object to the question, if it is as to when he first went to Florida.

Mr. HIGGINS. I thought my question was very plain—when he went to Florida to live?—A. 1885.

Q. (By Mr. HIGGINS.) Where from?—A. Philadelphia.

Q. That was in 1885?—A. Yes, sir.

Q. Has he at any time since then been—in the language of the learned manager—in Guyencourt, and for how much of the year?—A. He has usually been there in the summer time.

Q. At any other time than the summer time?—A. Yes.

Q. What?—A. In the winter time. He was there upon the occasion of the illness of his father, which resulted in his decease, in 1889. He was there during the winter.

Q. He was there during the winter at the time of his father's illness and decease in 1889. At any other time in the winter?—A. I think he made occasional visits.

Q. To whom?—A. To his mother.

Q. Does Mrs. Anne Swayne at this time reside or live in Guyencourt?—A. She does.

Q. During what time of the year?—A. In the summer, spring, and a portion of the autumn.

Q. Where does she spend the rest of the year?—A. At present she is at my residence. During the latter years she has been unable to go South to spend the winters with her son.

Q. During the latter years?—A. Yes, sir.

Q. You say that during that time she has been abiding with you in your household in Philadelphia?—A. She stays with me in the winter.

Q. During the time she has been staying with you has the house at Guyencourt been open? Has Judge Swayne been there?—A. No; the house was closed.

Q. Except the visit that the judge made during the illness and death of his father, and other visits that he might have made while his mother was there, has he been at that place during the winter since he went to Florida to live?—A. Not that I know of.

Q. Has there been, or not, a close family intimacy between your wife and yourself on the one part and Judge Swayne and his family on the other?—A. There has been.

Q. In which you are aware of the movements of each other?—A. They are intimate.

Q. How is the property at Guyencourt occupied? Is it in the hands of a tenant or not?—A. There is a tenant occupying the greater portion of the land, with a tenement.

Q. Occupying a tenant house? The mansion house belongs to the family?—A. The mansion house is not occupied by the tenant.

Q. But that you say has been continuously closed in the winter since Mrs. Swayne came to live with you?—A. I think there was one exception, in which the Judge's son occupied it one winter.

Q. What is the Judge's son's name?—A. Henry G.

Q. Do you know what winter that was?—A. No; I can not locate it exactly by date.

Q. Is there any other way in which you can fix it?—A. I think it was shortly after he was married and had a spell of yellow fever and was there recuperating.

Q. Did he have that spell of yellow fever in Cuba?—A. In Habana.

Q. After the war?—A. Yes, sir.

Q. Or during the American occupation?—A. Yes.

Q. Do you recall the time when the act of Congress was passed curtailing the district of Judge Swayne?—A. I do.

Q. Did you have any conversation with the Judge at that time about the effect of that legislation upon his residence and where he proposed to live after that?

Mr. Manager PERKINS. I do not object to that question, but of course it should be answered "yes" or "no." The witness should be instructed not to go beyond that.

A. Not at the time.

Q. (By Mr. HIGGINS.) At what time did you have such a conversation with him?—A. I think it was during the subsequent summer.

Q. How do you fix it?—A. I fix it by a paper that he showed me.

Q. What was the paper?—A. It was an invitation to reside in Tallahassee.

Q. From whom?—A. From eminent citizens there. I am not acquainted with them personally.

Q. Did you read the paper?—A. I did. It was handsomely engrossed—

Mr. Manager PERKINS. I object to the contents of the paper. The counsel, I suppose, does not want that.

Mr. HIGGINS. The witness said it was handsomely engrossed. That does not relate to its contents. That relates to its appearance.

Mr. Manager PERKINS. There is no use wasting time on that.

Mr. HIGGINS. I think this is very pertinent.

Mr. Manager PERKINS. What is the question?

Q. (By Mr. HIGGINS.) I ask whether or not at the time you read that paper?—A. I did.

Q. And it was an invitation to the judge to reside at Tallahassee?

Mr. Manager PERKINS. I object to the contents of the paper being stated. In the first place, if they are going to prove the contents of the paper, they should produce the paper. In the second place, how can it bear upon the question of Judge Swayne's residence at Pensacola that somebody at sometime asked him to reside somewhere else? It certainly can not be any evidence of residence.

The PRESIDING OFFICER. The Presiding Officer understands that the object of these preliminary questions is to lay the foundation for a conversation between the witness and Judge Swayne, in which Judge Swayne made some statements as to his intention with respect to his residence.

Mr. HIGGINS. That is it exactly.

Mr. Manager PERKINS. But it is not necessary to give the contents of the paper in order to call his attention to the time of the conversation. What they want is not to call his attention to it, but to give the contents of the paper.

Mr. HIGGINS. I do not ask for the contents of the paper. I only want to know what the paper referred to.

Mr. Manager PERKINS. You have got that.

Mr. HIGGINS. All right. Then I can go on.

The PRESIDING OFFICER. The Presiding Officer thinks the counsel have gone as far in that connection as is proper.

Q. (By Mr. HIGGINS.) What did the Judge state at that time about the subject of his residence?

Mr. Manager PERKINS. To that I object, Mr. President. The statements of Judge Swayne, which we offered to prove, were excluded, of course, for a different reason, but certainly there is no rule of law which allows the statements of the respondent to be put in evidence in his own behalf. That, of course, is fundamental. No man can prove what he has done or what he has not done by his own statements as to what he did or purposed to do. There is no more fundamental rule of evidence than that the respondent's statements can not be proved in his favor. If that were so, all Judge Swayne would have to do would be to state that he resided in Florida, and that would make him a resident of Florida, or be evidence of his residence there.

Mr. HIGGINS. I submit to the Senate that this question is eminently proper as a verbal fact, an act of the judge, ante litem motam, before this matter was mooted, years before, in the announcement to his nearest of kin as to his residence at that time. In order to make clear to the Senate the question upon which it is asked to pass, I will say that the authorities of Leon County, Fla., in which is the city of Tallahassee, gave an invitation to Judge Swayne, written and engrossed, to make his residence and home there, and that this was shown to this witness, and that the Judge gave then reasons why he could not accept that offer, because of where he had elected to live. If that is not fair testimony and within the rule, I do not know what is.

It was long before this question was ever raised, not with any view of the possibility of any such proceeding as this. The statement is admissible for a double reason; that he was not going to accept that offer; that the offer was made very shortly after the act of Congress was passed, and therefore the question arose at that time; and in rejecting that invitation he did it because he had elected to reside, as the witness will state, elsewhere in his district and with reference to the requirements of that act.

Now, we have made that statement in answer as a substantive part of the defense, that he announced at that time his intention as to where he expected to live as a proper thing for him to do, and it is an act which I submit it is eminently proper for us to be able to prove.

Mr. Manager PERKINS. In other words, Mr. President, the offer of the counsel is this when we analyze it: The question being whether Judge Swayne as a matter of fact became a resident of the northern district of Florida, they can prove that by showing by another witness that Judge Swayne said he intended to become a resident. You can prove a fact. You can prove what a man did; what he was bound to do; that he became a resident. How—by showing what he did? No;

but by proving that he said to some one else he intended to become a resident.

THE PRESIDING OFFICER. The Presiding Officer will submit this question to the Senate.

MR. MANAGER OLMSTED. May I be permitted to cite a precedent before it is put to the Senate?

I find that in the trial of Andrew Johnson, page 207 of the proceedings, as reported in the Globe, it was offered for the counsel by the respondent to prove in these words:

We offer to prove that the President then stated that he had issued an order for the removal of Mr. Stanton and the employment of Mr. Thomas to perform the duties ad interim; that thereupon Mr. Perrin said: "Supposing Mr. Stanton should oppose the order." The President replied: "There is no danger of that, for General Thomas is already in the office," etc.

MR. MANAGER BUTLER having objected, **MR. MANAGER WILSON** said:

Mr. President, as this objection is outside of any former ruling of the Senate and is perfectly within the rule laid down in Hardy's case—the celebrated English impeachment case—and cited this ruling from that case, which may be found in 24 State Trials, page 1096:

Nothing is so clear as that all declarations which apply to facts, and even apply to the particular case that is charged, though the intent should make a part of that charge, are evidence against a prisoner, and are not evidence for him, because the presumption upon which declarations are evidence is that no man would declare anything against himself unless it were true; but every man, if he was in a difficulty, or in the view of any difficulty, would make declarations for himself.

The Chief Justice submitted the question to the Senate whether it should be admitted, and the vote was—yeas 9 and nays 37. So the question was rejected. There you have precedent both English and American.

MR. BACON. Mr. President, as the matter is about to be submitted to the Senate, and it will take some time, and the hour fixed for the adjournment of the Senate sitting in the trial of impeachment is about to arrive, I ask that unanimous consent be given that the session of the Senate sitting for this purpose may be prolonged until 6 o'clock, unless otherwise ordered.

THE PRESIDING OFFICER. The Senator from Georgia asks unanimous consent that the session of the Senate in the impeachment trial may be prolonged until 6 o'clock, unless otherwise ordered. Is there objection? The Presiding Officer hears no objection, and it is agreed by unanimous consent that the session of the Senate sitting in the impeachment trial shall be prolonged until 6 o'clock, unless some motion for adjournment should be made earlier than that time.

MR. McLAURIN. Mr. President, I merely rose to ask what the question is, so that I may know how to vote on it.

THE PRESIDING OFFICER. The Presiding Officer will state the question. Counsel for the respondent offered to prove, as affecting the question of his residence, statements made by the respondent to the witness in the year 1894 or 1895 as to where it was his intention to reside. That is the question which is submitted to the Senate.

MR. HIGGINS. I wish further to say that I intend also to put to the witness the question as to where the Judge stated at the time he did reside.

MR. MANAGER OLMSTED. That would be equally objectionable.

THE PRESIDING OFFICER. And, further, the statements made by Judge Swayne at that time as to where his residence was. Senators in

favor of the admission of such testimony will say "aye," opposed "no." [Putting the question.] In the opinion of the Presiding Officer the "ayes" have it. The "ayes" have it. The counsel will ask the question.

Q. (By Mr. HIGGINS.) Will you please state what Judge Swayne said as to his residence when this invitation to reside at Tallahassee was brought to your attention?—A. He said he would not accept it.

Q. Did he give any reason for that? State all he said.—A. I can only in a general way.

Q. To your best recollection, sir.—A. He said he would continue to reside in Pensacola, and discussed or presented to me the merits of some property—residence property.

Q. Did he say anything about his getting a residence there—a house, I mean a dwelling?—A. He described some property that he thought would be a good investment?

Q. A good investment?—A. As a residence.

Q. Do you know or not his stating at that time that he would not go to Tallahassee because he was residing at Pensacola?

Mr. Manager PERKINS. I must object to that as leading.

Mr. HIGGINS. I was endeavoring to restate what I understood the witness to have already stated.

Mr. Manager PERKINS. It is quite unnecessary. He is a willing witness.

Mr. HIGGINS. I withdraw it. I do not want to do anything that is unfair or get any advantage at all. There is no need of it.

The PRESIDING OFFICER. The Presiding Officer trusts that the Senate will be in order and will not indulge in audible conversation.

Q. (By Mr. HIGGINS.) Mr. Jackson, do you know whether or not Judge Swayne with his family went to Europe in any year?—A. They went.

Q. What year, sir?—A. It may have been 1898.

Q. Do you know how long the judge remained over there?—A. During the summer time.

Q. Do you know how long the remainder of the family stayed there?—A. About a year.

Q. Do you know where the family came to reside after they returned?

Mr. Manager PERKINS. I object to that. It is calling for a conclusion of law. I do not object to the witness stating what they did.

Q. (By Mr. HIGGINS.) Well, where they went to abide, to get under roof?—A. They lived in Wilmington, Del.

Q. For how long?—A. Probably until spring. I do not recollect exactly.

Q. Did you visit Judge Swayne at any time at Pensacola?—A. I did.

Q. What year?—A. 1902, I think.

Q. But not before?—A. Not before.

Q. Had you any personal knowledge of his holding court outside of his district?—A. I had not.

Q. Nothing of your own knowledge?—A. I had not.

Mr. HIGGINS. That is all, I believe.

Cross-examined by Mr. Manager PERKINS:

Q. Just one or two questions. How often were you at Guyencourt between 1894 and 1901?—A. A number of times. I could not answer definitely.

Q. How many have you any recollection of?

Mr. HIGGINS. I did not get the question.

Q. (By Mr. Manager PERKINS.) How often were you at Guyencourt between 1894 and 1901? Were you there every year?—A. A number of times each year.

Q. Where was Judge Swayne's mother during those years?—A. When I visited Guyencourt she was there.

Q. Was she there during those years at any time in the winter?—A. She stayed North one winter and kept the house open. Whether it was in those years or not I am not exactly positive.

Q. You mean that she kept the house open at Guyencourt?—A. At Guyencourt.

Q. Did she at any time between 1894 and 1901 keep the house open at Guyencourt?—A. I can not locate that year.

Q. Any of those years; any of the six years?—A. She was there one winter.

Q. But you can not say what winter?—A. Not with certainty.

Q. Now, when you were there Judge Swayne was there and his family were there, were they not?—A. Not in winter; in summer.

Q. When were you there?—A. In summer.

Q. Were you there in the winter yourself?—A. When Mrs. Swayne was there?

Q. One winter when she was there?—A. Yes.

Q. Where did Judge Swayne's wife and children stay in the winter of 1894, if you know?—A. I think they were in St. Augustine.

Q. And where were they in 1895 and 1896?—A. Probably at St. Augustine.

Q. Were they at St. Augustine in 1897?—A. I think not.

Q. Where were they in 1897?—A. It may have been they went that winter. I can not answer from recollection.

Q. As far as you know, Judge Swayne's family spent their winters at St. Augustine, except the one winter they spent in Europe, from 1894 to 1900?—A. A portion of the winter after returning from Europe they stopped in Wilmington.

Q. And the winter after returning from Europe they stopped in Wilmington. Now, when you were there in the summer who was running the house?—A. Mrs. Swayne.

Q. Mrs. Swayne?—A. Mrs. Anne P. Swayne.

Q. Did she pay the expenses of the family?—A. In part.

Q. Did she pay all the expenses of the house?—A. I can not explain. I do not know.

Q. You do not know? Did Judge Swayne pay the bills—I mean the butchers' bills, and those bills—or did his mother?—A. I do not know.

Q. Do you know the fact that Judge Swayne had horses at Guyencourt?—A. He had.

Q. Several horses, did he not?—A. He had three.

Q. Those were at Guyencourt all these years, were they not?—A. While he owned them.

Q. You never knew of his taking those horses South, did you?—A. He did not.

Q. The horses resided at Guyencourt, did they not, whenever he did?—A. They were there continuously.

Q. Did Judge Swayne have any other property there?—A. Not that I know of.

Q. What rooms did he occupy in the house?—A. The second story.

Q. Was there anybody there except Judge Swayne's family and his mother?—A. Only as visitors.

Q. When did his father die?—A. In 1889.

Q. And how old was Mrs. Swayne at that time, the mother?—A. She is in her eighty-seventh year now.

Q. Does she spend her winters with you?—A. She does latterly.

Q. When did she first begin to do that?—A. Probably six years since.

Q. That was in 1897 or 1898?—A. Soon after that, I think.

Q. What do you mean by saying that Mrs. Swayne, the mother, paid the expenses in part?—A. She received, as I understood, the rental of the farm and used that.

Q. Did she turn in toward the expenses of the establishment anything except the rental of the land?—A. Not that I know of.

Q. What?—A. Nothing more that I know of.

Q. And all the other expenses were paid by Judge Swayne, as far as you know, were they not?—A. That is my presumption.

Q. Then your presumption and your recollection is that Judge Swayne paid the entire expenses of the Guyencourt establishment, except the rental from the farm was turned in toward those expenses? Is that the fact?—A. I do not know that of my own knowledge. That is simply a presumption.

Q. Was the money received by Mrs. Swayne for rent turned into the expenses of the house or did she use it for her own private expenses?—A. I can only answer presumption.

Q. Well, what is your presumption?—A. The presumption is that they were used for general expenses.

Q. You think they were used for general expenses?—A. I have no doubt of it.

Q. How large a farm is there?—A. About 80 acres.

Q. How much did it rent for?—A. I think it rented for \$300.

Q. Now, how early were you ever at Guyencourt?—A. How early?

Q. Yes; how early in the year?—A. I was in the habit of visiting Guyencourt any time that suited our pleasure and convenience—frequently.

Q. What is the earliest time you ever saw Judge Swayne there from 1894 to 1900? How early in the year?—A. In the early summer, perhaps June, May.

Q. Well, you saw him there in May, did you not?—A. I may have.

Q. Did you ever see him earlier than that from 1894 to 1900?—A. I can not say that I did. His time there was the summer.

Q. I am not asking for that. I am asking when you saw him. How late did you see him there?—A. Until August, possibly September.

Q. Now, Mr. Jackson, is it your recollection that you ever saw Judge Swayne there as late as October?—A. It may have been. He may have been there as late as October on some occasion.

Q. Who employed the servants in the establishment when you were there?—A. There were servants employed by Mrs. Swayne and by the Judge's wife.

Q. Mrs. Swayne, as I understand, contributed nothing except the rent, the \$300 rent.—A. She had her own servants.

Q. She had her own servants besides. Well, who hired the servants, who took care of the horses, and cooked the meals, and cleaned out the house?—A. I can only presume in answering.

Q. You would presume Judge Swayne did, would you not?—A. Yes.

Mr. Manager PERKINS. I think that is all.

Reexamined by Mr. HIGGINS:

Q. One question only. Was or was not the furniture in that house, which has been spoken of in the cross-examination, furniture that belonged to it during the lifetime of Mr. Swayne, the father of the Judge, and has been in that family for sixty years?—A. The same furniture.

Q. It is Mrs. Swayne's now?—A. Yes, sir.

Mr. SCOTT. Mr. President, if this question is in order I should like to have it propounded.

The PRESIDING OFFICER. The Senator from West Virginia propounds the following question, which will be read:

The Secretary read as follows:

Q. Where has Judge Swayne's home been since he was appointed judge.

Mr. Manager PERKINS. I dislike very much to object to any question put by a Senator, because our object is to furnish knowledge of the facts to the Senate; yet it seems to me, Mr. President, that as we have often suggested, all these questions should be those that call the witness's attention to what the Judge has actually done. Where he has been, what he has done, what the facts are, we are anxious, of course, should be presented, but that the witness should give an opinion, which really is the question that the Senate itself must answer, seems to us hardly within the rule. Of course, we do not wish to object to any fact that any Senator may desire to call out. Anything that we may have omitted to ask, we would be glad to have the Senate ask, as to what Judge Swayne did, where he was, what he was doing during these seven years.

The PRESIDING OFFICER. The Presiding Officer will not undertake to decide, if questions are raised about it, what question may be asked by Senators.

Mr. Manager OLMSTED. I do not understand that the honorable manager objects to the question, but simply to its being answered by the witness. That may seem an immaterial point, but it was argued at some length in the Johnson case.

Mr. SCOTT. Mr. President, as I understand it we are seeking light on this question. How shall we determine where the residence of Judge Swayne is unless we hear from witnesses on that point?

Mr. Manager PERKINS. I suggested any facts the witness can give. Of course we would be glad to have him state, but not to have the witness act as judge instead of the Senate.

The PRESIDING OFFICER. The Presiding Officer must remind Senators that debate is not in order. The Presiding Officer will present to the Senate the question whether the witness shall answer the question which has been propounded by the Senator from West Virginia. The Secretary will read the question.

The Secretary read as follows:

Q. Where has Judge Swayne's home been since he was appointed judge?

The PRESIDING OFFICER. Shall the witness answer this question? [Putting the question.] In the opinion of the Chair the noes have it. The noes have it.

Mr. QUARLES. I should like to ask one question.

The PRESIDING OFFICER. The Senator from Wisconsin propounds the following question.

The Secretary read as follows:

Q. What year did Judge Swayne cease to keep his horses at Guyencourt, Del.?

Mr. CULBERSON. May we have the question read again?

The PRESIDING OFFICER. It will be again read.

The Secretary read as follows:

Q. What year did Judge Swayne cease to keep his horses at Guyencourt, Del.?

Mr. HIGGINS (to the witness). Answer the question.

The WITNESS. Some of them are there now.

The PRESIDING OFFICER. Are there any further questions?

Mr. HIGGINS. That is all. Call Robert McCullough.

ROBERT McCULLOUGH sworn and examined.

By Mr. HIGGINS:

Q. Where do you reside, Mr. McCullough?—A. Guyencourt, Del.

Q. What is your occupation?—A. Farming.

Q. Are you a tenant farmer or do you live upon your own land?—

A. I live upon my own land.

Q. How long have you lived there?—A. Forty-eight years.

Q. Is that your age?—A. That is my age.

Q. All your life, then?—A. All my life.

Q. How near to the Swayne property?—A. Within sight.

Q. Within sight?—A. Less than ten minutes' walk.

Q. Is it within half a mile of it?—A. I would say so.

Q. You of course have known that place familiarly all your life, then?—A. I have.

Q. Do you know who that property belongs to?—A. Mrs. Anne Swayne?

Q. Is she the widow of Henry Swayne?—A. Yes, sir.

Q. The mother of the Judge?—A. Yes.

Q. Is the farm rented?—A. The farm is rented.

Q. It has been rented all these years since Mr. Swayne died?—A.

Yes.

Q. To a tenant?—A. To a tenant.

Q. One tenant or another?—A. Different ones.

Q. Who has occupied the mansion house since that time?—A. Mrs. Swayne.

Q. It is her house?—A. It is her house.

Q. Have you known of Judge Swayne being there?—A. I have seen him there.

Q. At what time of the year?—A. Summer time.

Q. At any other time than the summer?—A. I believe not.

Q. Tell the Senate whether or not you have seen him there each and every year.—A. Yes; I have.

Q. During the summer time?—A. During the summer time.

Q. Have you seen him there during September or October?—A. I believe not, to the best of my knowledge.

Q. Have you ever known him to be there living in that house after the month of October or before the month of June?—A. I believe not.

Q. Do you know whether or not the house is open or closed during that time of the year?—A. How is that?

Q. Do you know whether the mansion house is closed or is it open and occupied during the time of the year from the beginning of November until June?—A. From the beginning of November to June?

Q. Yes; whether it has been occupied or closed?—A. Yes; Mrs. Swayne occupies it, but in the winter time she has been going to her daughter's.

Q. Has anybody else been there when she was gone?—A. No; the house would be closed.

Q. The house would be closed?—A. It is closed now.

Q. Did you know Judge Swayne when he lived there with his father? Were you old enough to know that?—A. I have seen him come there and go away again.

Q. Do you know at what time he went to Florida to live?—A. I do not remember the date, but I know he went to Florida, or at least it was so said.

Q. And has he, or not, been in the habit since he went to Florida of coming there during the summer time, as you have spoken?—A. Yes.

Q. Do you know in what year his father died?—A. Well, I could not say positively what year—between 1885 and 1890.

Q. Has there been any difference between the lengths of his visits since 1894 and before that time?—A. I should say not.

Q. Do you know whether Judge Swayne ever voted or did any other act of citizenship in Delaware from Guyencourt?—A. I believe not, to the best of my knowledge.

Q. Have you held any official position?—A. I have.

Q. What?—A. I have been in the legislature of Delaware at one time.

Q. May I ask what your politics is?—A. Democrat.

Q. And a member of the Delaware legislature?—A. Yes, sir.

Q. Have you taken an active part in affairs?—A. I have.

Q. And in politics?—A. Yes, sir.

Q. Have you ever known of the Judge to vote there since he left his early residence?—A. I have not.

Mr. HIGGINS. That is all.

Cross-examined by Mr. PERKINS:

Q. Just a question or two. How often were you at the Guyencourt house between 1894 and the fall of 1900?—A. Please repeat that.

Q. How often were you at the Guyencourt residence between July, 1894, and the fall of 1900? Were you there often or seldom?—A. I have passed there quite often. Our post-office is there at Guyencourt.

Q. Do you remember any time in those years when the mother was there except when Judge Swayne was also there?—A. The mother has been there all her life, as near as I can recall—that is—

Q. Do you testify that Mrs. Swayne, the mother, has been there during the winter in the last few years? Is that your recollection?—

A. My recollection is that some winters of late she has not been there.

Q. Has she been there during the winters for the last nine years?—

A. I should say to the best of my knowledge that she has.

Q. Do you not know the fact that she now lives at Philadelphia with her daughter?—A. She has lived there, but now she—

Q. She has for some years, has she not?—A. Well, she may—yes, in the winter time.

Q. When Judge Swayne was there his wife and children were there at Guyencourt?—A. I think not.

Q. You think they were not there when the judge was there?—A. I may have seen them there once or twice.

Q. In other words, you think that during these six or seven years you only saw the wife and children at Guyencourt once or twice?—A. Only a very few times.

Q. You think the judge spent the summer there alone with his mother? Is that your recollection?—A. His visits were home during the summer time.

Q. Were what?—A. His visits to home.

Q. But you think he came alone to make these visits?—A. I saw him come there alone and get off the train.

Q. Then it is your recollection that during these six or seven years when Judge Swayne was there in the summer, his family was not there with him? Is that your recollection?—A. I have not seen his family there but once or twice, to the best of my knowledge.

Q. Did you not know about his wife and children just as you did about Judge Swayne?—A. Only if I had occasion to see them.

Q. You saw so little of the family during six or seven years that it is your recollection the wife and children were not there during the six or seven years, except once or twice?—A. That is my recollection.

Q. How many horses did Judge Swayne keep there?—A. I could not tell you.

Q. Well, did he keep any?—A. Yes.

Q. Were those horses worked on the farm?—A. The farm was rented to a tenant.

Q. Well, what was done with the horses? What did he keep them there for?—A. He kept them there to drive, I suppose.

Q. What was done with the horses when he was not there?—A. That is more than I can tell.

Q. Who rented this farm?—A. Different tenants.

Mr. Manager PERKINS. That is all.

Mr. HIGGINS. That will do.

ATWOOD WILSON, sworn and examined.

By Mr. HIGGINS:

Q. What is your age, Mr. Wilson?—A. Fifty-one.

Q. What is your occupation?—A. Farmer and coal dealer.

Q. Where do you reside?—A. In Guyencourt.

Q. You are a coal dealer and farmer, you say?—A. Yes, sir.

Q. How long have you lived at Guyencourt?—A. All my life.

Q. Do you live right at Guyencourt?—A. The coal yard is at Guyencourt; my home is about half a mile away.

Q. Your coal yard is at the station? Is it a station and post-office?—A. It is a station and post-office.

Q. How long has it had that name?—A. About fifteen years.

Q. And it was after the railroad came and the station was located there?—A. Yes, sir; fifteen years after.

Q. Are you familiar, or not, with the homestead there of Henry Swayne during his lifetime?—A. Yes, sir.

Q. Whom does that property belong to since his death?—A. His wife, Mrs. Anne P. Swayne.

Q. His widow?—A. Yes, sir.

Q. Is she the mother of the Judge?—A. Yes, sir.

Q. Will you please state whether you have known Judge Swayne to be at that place, that homestead; and, if so, during what time of the year—at any time from 1894 up to the present time?—A. He was there in the summer time.

Q. In the summer time?—A. Yes, sir.

Q. Any other time than the summer?—A. I have never seen him there at any time without it was for one day. I have seen him there one day.

Q. And your place of business was at the station?—A. Right near the station.

Q. How far was the Swayne house from the station?—A. About 200 yards.

Q. It is very near the station, also?—A. Yes, sir.

Q. What has been done with the farm since Henry Swayne's death?—A. It has been rented.

Q. It has been rented to tenants?—A. Yes, sir.

Q. Do you know on what terms—whether it is a share rent or a money rent?—A. A money rent, I believe.

Q. Do you know for what amount?—A. No, sir.

Q. Now, do you know whether Mrs. Anne Swayne has resided at that place during the years since her husband's death—has been there living in the house during all the time, or whether she has spent any of the time elsewhere?—A. She is always there from early spring until late fall; but through the cold winter months she is mostly with her daughter in Philadelphia.

Q. How long now has that course of living been pursued by her, so far as you know?—A. I should think about six years.

Q. About six years?—A. Possibly longer; I could not just say.

Q. Before that time, where did she spend her winters?—A. She would spend some of the winters there and some of them, I think, she would go South to the Judge's.

Q. Some she would spend there and some she would go South to the Judge's?—A. Yes.

Q. Have you ever known the Judge or his family to spend a winter at Guyencourt since he has been living in Florida?—A. Not to my knowledge; they have not.

Q. And you live right there within a half mile of the station?—A. Yes, sir.

Q. And your place of business was at Guyencourt station and the Swayne house was within 200 yards of it?—A. Yes, sir.

Q. You say you are a farmer. Is it a farm that you own yourself or do you rent it?—A. I own my own farm.

Q. You own your own farm?—A. Yes, sir.

Q. And have you lived there all your life?—A. Yes, sir.

Q. Do you know whether Judge Swayne has ever paid taxes or vote there?—A. No, sir.

Q. What do you mean?—A. That he has not.

Q. Or any other acts of citizenship?—A. No, sir.

Mr. Manager PERKINS. We will concede that Judge Swayne has not paid taxes anywhere. It is not necessary to prove it.

Mr. HIGGINS. It is a pertinent question.

Mr. Manager CLAYTON. He had property there, but did not pay taxes. We admit that.

Q. (By Mr. HIGGINS.) Do you know of Judge Swayne and his family going to Europe?—A. Yes, sir; I remember.

Q. When?—A. I can not say positively the year. It was in the summer time they left there, I know—in July.

Q. It was in the summer time when they left?—A. Yes, sir.

Q. Do you know whether or not the Judge returned the same year?—A. Yes, sir.

Q. Did you see him after he came back?—A. I think he came and visited his home, if I am not mistaken.

Q. He came there to visit his mother, after he returned?—A. I think so.

Q. Do you know of his going to Florida after he returned from Europe?—A. No, sir; but I know that he went there every fall.

Q. Do you know of the Judge's family being in Wilmington in any winter?—A. I knew they were there one winter; yes, sir.

Q. What year was that?—A. I think the winter of 1899 or 1900, if I am not mistaken; possibly later. I can not say.

Q. Do you know in whose name the Swayne property is assessed for taxes?—A. Anne P. Swayne, sir.

Q. What would you say, Mr. Wilson, was about the length of the visits of the judge during the summer to Guyencourt?—A. As near as I could say, about two months.

Q. About two months?—A. Yes, sir.

Mr. HIGGINS (to Mr. Manager PERKINS). Cross-examine.

Cross-examination by Mr. Manager PERKINS:

Q. Mr. Wilson, would you be sure that you have not seen Judge Swayne at Guyencourt as early as May in any year?—A. I do not remember, sir.

Q. You do not remember?—A. No, sir.

Q. Have you ever seen him there as late as September or October?—A. About the 1st of September.

Q. The title of this property is in Mrs. Swayne for life, is it not?—A. Yes, sir.

Q. And after her death, where does it go?—A. My understanding is to the Judge's son.

Q. Are there any children of Mrs. Swayne?—A. Yes, sir.

Q. There is one son and one daughter?—A. Yes, sir.

Q. Is that the family?—A. Yes, sir.

Q. And the property, as you understand, goes not to the daughter, but to the Judge's son?—A. Yes, sir.

Q. Did you ever sell coal to that house?—A. I did.

Q. Did you ever sell coal to Judge Swayne?—A. No, sir.

Q. Do you sell supplies for farms or horses?—A. No, sir; nothing but coal.

Q. How many horses did Judge Swayne have there?—A. Only one, to my knowledge, of his own.

Q. Only one to your knowledge?—A. One driving horse was all I ever heard was his horse.

Q. Was he assessed on that?—A. I could not say.

Q. Has he a horse there now?—A. Not to my knowledge.

Q. You do not know about that?—A. No, sir; I do not think he has.

Mr. Manager PERKINS. That is all.

Reexamined by Mr. HIGGINS:

Q. There is one question that I neglected to ask. Do you sell coal to that place?—A. Yes, sir.

Q. Who pays for it?—A. Mrs. Swayne.

Q. Mrs. Anne Swayne?—A. Yes, sir.

MARTIN TURNER, sworn and examined.

By Mr. HIGGINS:

Q. Mr. Turner, what is your age?—A. Fifty-nine years old.

Q. Where do you live?—A. Guyencourt.

Q. Delaware?—A. Yes, sir.

Q. What is your occupation?—A. Well, farmer.

Q. How long have you been a farmer there—how long have you lived at Guyencourt?—A. Since 1898.

Q. Since 1898?—A. Yes, sir.

Q. Where do you live at this time?—A. In the neighborhood of Guyencourt.

Q. Have you ever lived on the Swayne property?—A. Yes, sir.

Q. In what capacity?—A. I rented the farm of Mrs. Swayne.

Q. You rented the farm of Mrs. Anne Swayne, the mother?—A. Yes, sir.

Q. Do you know what year you rented it from her?—A. 1898.

Q. And how long did you so rent it—how many years?—A. I was there for four years.

Q. You were there for four years?—A. Yes, sir.

Q. Have you been farming since you left that place?—A. Well, not exactly myself, but with my son.

Q. On whose place is that?—A. Howard Ely's.

Q. How far is that from the Swayne homestead?—A. It is about half a mile.

Q. Now, during that time did Mrs. Anne Swayne spend any of her time at her place there?—A. Yes, sir.

Q. What time of the year did she spend there?—A. Well, the summer.

Q. In the summer time?—A. Yes, sir.

Q. What did she do after the summer?—A. Well, she went, so far as I know, to Philadelphia to her daughter's.

Q. To her daughter's there?—A. Yes, sir.

Q. That was her habit from the time you went there?—A. Yes.

Q. Did she ever spend any of the winter on the farm while you were there?—A. Yes; some part of the winter. I can not remember exactly.

Q. Some part of the winter?—A. Yes, sir.

Q. What part? Was it the early part, or would she come down there in the midst of the winter?—A. No, sir; in the early part.

Q. You mean she remained later than usual?—A. She remained later than usual.

Mr. MALLORY. Mr. President, we can not hear a word that is said on account of the noise in the Senate, not on account of the witness or of the counsel.

Mr. HIGGINS. It may be that the Secretary can repeat the answers.
The PRESIDING OFFICER. The witness will make himself heard if Senators will be quiet and if order is preserved in the galleries.

Q. (By Mr. HIGGINS.) From whom did you rent the property?—A. Mrs. Swayne.

Q. Was it by a written lease?—A. Yes, sir; I have it in my pocket.

Q. Have you?—A. Yes, sir.

Q. Will you let me look at it?—A. Yes, sir; it is only for a year at a time.

Q. Did you hold over under the same lease?—A. Yes, sir.

Q. Is that [indicating] Mrs. Swayne's signature?—A. Yes, sir.

Q. Is that [indicating] yours?—A. Yes, sir.

The PRESIDING OFFICER. Is there any real question about the ownership of this property?

Mr. Manager PERKINS. None whatever, sir.

Mr. HIGGINS. With that admission, your honor, we will not take this lease from the good man. [To the witness.] Now, please state what time during the year Judge Swayne would be at the home there in Guyencourt?

A. In the summer time.

Q. In the summer time?—A. Yes, sir.

Q. Any other time than summer?—A. Well, not that I know of. He might have been there for a day, or probably something of that kind; but not that I know of.

Q. Did you ever know him as living there?—A. No, sir.

Q. But only as coming there as a summer visitor?—A. That is all.

Q. And his family?—A. Yes, sir.

Q. Were they there during the summer?—A. Part of the time; yes.

Q. And this was the case from the time you went there in 1898?—

A. Yes, sir.

Q. You went on on the 25th of March, 1898?—A. Yes, sir.

Q. That is moving time in Delaware. Do you know of Mrs. Swayne one winter keeping open house as late as Christmas?—A. Well, I can not swear, sir, to that.

Q. Do you know what year it was that she remained there rather late?—A. No, sir.

Q. Do you know of the Judge voting in Delaware?—A. No, sir.

Q. In Christiana Hundred?—A. I never knew him to be there at election time.

Q. You never knew him to be there at election time?—A. No, sir.

Q. But it was during, as you say, the summer months that you saw him there?—A. Yes, sir.

Q. And only the summer months?—A. That is all, sir.

Cross-examined by Mr. Manager PERKINS:

Q. How much rent do you pay?—A. Three hundred dollars.

Q. When Judge Swayne came there did anybody come with him?—

A. Well, that I can not say.

Q. What?—A. I can not say that for certain.

Q. When he went away did anybody go with him?—A. Yes, sir.

Q. Who went away with him?—A. Mrs. Swayne, his wife.

Q. What did the children do? Did they go away with him?—A. Well, I can not remember that.

Q. You do not know?—A. No, sir.

Q. How many children did he have?—A. Three, as far as I know.

Q. How old are they?—A. That I do not know.

Q. Were those children at his place before Judge Swayne came in the summer?—A. Yes, sir; sometimes they were.

Q. How long before?—A. Well, I do not know that.

Q. Were they there at any time when the mother, Mrs. Anne Swayne, was not there?—A. No, sir.

Q. What?—A. I do not think they were, unless it was the son, Harry. He might have come out and went in the house.

Q. Did they remain after Judge Swayne went away?—A. Yes, sir.

Q. How long?—A. You mean his family?

Q. Yes; his family.—A. Well, I did not know as they did.

Q. Well, what is your recollection? We do not know and we want to find out.—A. Of their going away?

Q. Yes. Did they go away with the Judge when he went away, or did they stay at Guyencourt a while longer?—A. They went away at one time. I know they went away at the same time he did from Guyencourt. They went to the station.

Q. When was that—what year?—A. That I do not know.

Q. What time of the year?—A. Somewhere in the late part of the summer.

Q. Where did they go?—A. I do not know. I did not ask them.

Q. How many horses did the Judge keep there?—A. He did not keep any that I know of; that is, of his own.

Q. He did not keep any on the place?—A. No, sir. There were horses there that belonged to the son, as far as I know.

Q. As far as you know?—A. Yes, sir.

Q. How old was this son in 1898?—A. I judge he is about 30, or somewhere along there.

Q. Is he married?—A. Yes, sir.

Q. Where is his wife—at the house also?—A. Yes, sir; part of the time.

Q. Were they there when the Judge was there or at other times?—A. When the Judge was there.

Q. Only when the Judge was there?—A. Oh, no; they were there after he had gone.

Q. Where did they live?—A. In Wilmington.

Q. They did at that time?—A. Yes, sir.

Q. You went there first in 1898?—A. Yes, sir.

Mr. Manager PERKINS. That is all.

Reexamined by Mr. HIGGINS:

Q. One question, please. Before you went there in 1898, did you live in that neighborhood?—A. Yes, sir.

Q. How near to the Swayne place?—A. I lived on Robert McCullough's place.

Q. The same man who has been here as a witness?—A. Yes, sir.

Q. How long did you live there?—A. I lived there two years.

Q. That would bring you back to 1896?—A. Yes, sir.

Q. Where did you live before that?—A. I lived in another neighborhood, a place called Montchanin.

Q. How far is it from Montchanin to Guyencourt?—A. A couple of miles, I suppose. It is Colonel Dupont's place.

Q. It is 2 miles from Montchanin to Guyencourt?—A. Yes, sir.

Q. Have you lived in that neighborhood all your life?—A. No, sir.

Q. When did you first go into it?—A. Around that neighborhood in 1880.

Q. Since that time you have?—A. Yes, sir.

Q. Have you known the Swayne house since you have been living there?—A. Yes, sir.

Q. And the family?—A. Oh, no.

Q. When did you first come to know the family?—A. I first knew the Judge's father, I could not tell you what year—a year or two after I moved into the neighborhood.

Q. Have you known the Judge ever since his father's time?—A. No, sir; I only knew the Judge when I rented the place.

Q. But you did know the father and the family there?—A. Yes, sir.

Q. During his lifetime?—A. Yes, sir.

Q. Now, then, from that time on have you known of Judge Swayne ever living there during the winter?—A. No, sir.

Q. Only during the summer?—A. Yes, sir.

Mr. HIGGINS. That is all.

Mr. Manager PERKINS. We have no questions.

CHARLES C. MORRIS, sworn and examined.

By Mr. HIGGINS:

Q. Where is your residence?—A. Guyencourt, Del.

Q. What is your occupation?—A. Station agent and postmaster.

Q. How long have you held those positions?—A. For four years the coming June.

Q. When did you first know the family of Judge Swayne and his father?—A. I am not positive about the date, but I think it was 1862.

Q. I will ask you if you were not raised in that family?—A. Partly so; yes, sir.

Q. By the Judge's father?—A. Yes, sir.

Q. Have you or not been intimate with the family in that way during your life?—A. Yes, sir; ever since.

Q. Where did you live prior to your becoming postmaster and station agent?—A. I lived in Chester County, within about one hour's drive from Guyencourt.

Q. Across the line in Chester County, Pa., about one hour's drive from Guyencourt?—A. About one hour to an hour and a quarter; along there.

Q. How long did you live there?—A. Eighteen or nineteen years.

Q. During that time did you or not keep up your intercourse with the Swayne family?—A. Yes, sir.

Q. Where did Mrs. Anne Swayne live after her husband's death?—A. She lived in the old mansion.

Q. Did she live there during the winter?—A. No, sir.

Q. Where did she spend her winters?—A. She did one winter, I think.

Q. Where did she spend her winters?—A. With her daughter in Philadelphia.

Q. Do you know whether or not she also spent winters with her son in Florida?—A. I think she did one winter. I am not positive about that.

Q. Now, will you please say what time of the year Judge Swayne

and his family would spend at the Swayne mansion?—A. The summer time.

Q. Any other time than the summer?—A. I never saw them there in the winter time—that is, to stay.

Q. Never to stay?—A. No, sir. I never saw them stay over one night.

Q. In the winter time?—A. No, sir.

Q. Was this the course during all your knowledge of this family, as you have given it?—A. Yes, sir.

Q. Were they there any more before you were postmaster than since?—A. No, sir; just the same.

Q. Their habit in that respect in the last four years is the same as it was before?—A. Yes, sir.

Q. Have you had charge of the property in any way?—A. I generally took charge through the winter for Mrs. Anne Swayne.

Q. How long have you been doing that?—A. Ever since I have been there, more or less.

Q. Since the last four years?—A. Yes, sir.

Q. And the farm has been rented out to tenants?—A. Yes, sir.

Q. You are postmaster?—A. Yes, sir.

Q. Will you please state what times of the year mail comes there for Judge Swayne.—A. During the summer.

Q. Any other time?—A. I do not remember of ever having a letter there at any other time.

Q. If any does come there when he is absent, what do you do with it; what are your directions?—A. We remail it to Pensacola, Fla.

Q. By whose directions?—A. By direction of the Judge.

Mr. HIGGINS (to the managers on the part of the House). Cross-examine.

Cross-examined by Mr. Manager PERKINS:

Q. You became postmaster when?—A. 1901.

Q. 1901?—A. June, 1901.

Q. So the evidence which you have given about letters being received and forwarded begins with the year 1901?—A. Yes, sir.

Q. Prior to that time you were not postmaster and had nothing to do with it?—No, sir.

Q. Did Judge Swayne and his family ever stay in Wilmington?—

A. That I am not positive to state.

Q. You do not know whether they did or did not?—A. No; I can not say.

Q. Did you ever hear of their being at Wilmington in the winter time?—A. I heard he was there one winter with his son. I do not know how long.

Q. You heard that Judge Swayne spent one winter or part of one winter in Wilmington?—A. I do not know how long; a part.

Q. When he came in the early summer did he come alone or bring his whole family with him?—A. Brought his family.

Q. Were the family there already or did he bring them?—A. Sometimes they were there and sometimes he brought them.

Q. Did they go away with him? Did they leave him?—A. Mostly; yes, sir.

Q. Do you know where they went?—A. Pensacola, from what I could understand.

Q. Do you testify that when they left there in 1896 and 1897 and 1898 and 1899 they went to Pensacola, Fla.? Is that your evidence?—A. I could not say positively where they went. They left Guyencourt for there.

Q. You do not know anything about it?—A. I checked their trunks, I think, to Washington.

Q. To Washington?—A. Yes, sir.

Q. Then you do not mean to testify that from 1894 to 1900, when Mrs. Swayne and the children left, they went to Pensacola, Fla.?—A. I could not say; no, sir.

Q. Do you know any time during those six years when they went from Guyencourt to Pensacola, Fla.? I do not mean the Judge, but I mean his family.—A. I can not remember that.

Mr. Manager PERKINS. That is all.

Mr. HIGGINS. That will do, Mr. Morris.

The PRESIDING OFFICER. The Presiding Officer will inquire how many more witnesses it is probable the counsel for respondent will call.

Mr. HIGGINS. There are two witnesses who are in attendance to-day. They are on the question of residence, and will be short. We should like to examine them to-morrow. There are two officers of the Treasury whom we have in attendance, but we will want to call them after we shall have offered certain documentary evidence.

The PRESIDING OFFICER. What length of time do counsel think they will require for the rest of the witnesses?

Mr. HIGGINS. I do not think it will take a half hour.

Mr. THURSTON. It will take not more than thirty or forty minutes, unless some of our offers of documentary evidence may lead to objection and discussion.

The PRESIDING OFFICER. May the Presiding Officer inquire whether there will be many witnesses in rebuttal?

Mr. Manager PALMER. No, sir. We shall probably not have more than one witness in rebuttal, or perhaps two.

The PRESIDING OFFICER. It is entirely probable that two hours to-morrow will conclude the examination of witnesses?

Mr. HIGGINS. Oh, quite.

Mr. THURSTON. We think so.

Mr. President, I now offer in evidence, and ask to have them go into the record without reading, certificates from the clerks of the various courts of the United States where Judge Swayne has held court, showing the times and dates during all these years when he has been holding court in other districts than his own, and also in his own.

Mr. Manager PALMER. Let us take those and we will bring them in in the morning.

Mr. HIGGINS. There is no objection to that.

Mr. THURSTON. Certainly not.

The PRESIDING OFFICER. Could not the managers and counsel agree upon a statement as to the number of days Judge Swayne held court outside of his district, as well as within the same?

Mr. Manager PALMER. There is in this record a statement of all the times that Judge Swayne held court out of his district—at least all the days he was paid for, and I suppose that covers all the time.

The PRESIDING OFFICER. If it is possible for managers and counsel

to agree on that subject, it would shorten the proceedings and the record.

Mr. Manager PALMER. Perhaps we can agree, sir.

Mr. THURSTON. By agreement it is to be stated as a part of the testimony that Judge Swayne was born in the year 1842.

Mr. FAIRBANKS. I move that the Senate sitting as a court of impeachment adjourn, to meet at 1 o'clock to-morrow afternoon.

The motion was agreed to; and (at 5 o'clock and 58 minutes p. m.) the Senate sitting for the trial of the impeachment adjourned until to-morrow, February 23, at 1 o'clock p. m.

The managers on the part of the House and the respondent and his counsel retired from the Chamber.

IN THE SENATE, *February 23, 1905.*

The PRESIDENT pro tempore. The Senator from Connecticut [Mr. Platt] will please take the chair, the hour of 1 o'clock, to which the Senate sitting as a court of impeachment adjourned, having been reached.

Mr. Platt of Connecticut assumed the chair.

The PRESIDING OFFICER (Mr. Platt of Connecticut). The Senate is now sitting in the trial of the impeachment of Charles Swayne, United States judge in and for the northern district of Florida. The Sergeant-at-Arms will make proclamation.

The Sergeant-at-Arms made the usual proclamation.

The PRESIDING OFFICER. The Sergeant-at-Arms will ascertain whether the managers on the part of the House are in attendance.

The managers on the part of the House of Representatives appeared, and were conducted to the seats assigned them.

The PRESIDING OFFICER. The Sergeant-at-Arms will ascertain whether the respondent and his counsel are in attendance.

Judge Charles Swayne, accompanied by Mr. Higgins and Mr. Thurston, his counsel, entered the Chamber and took the seats assigned them.

The PRESIDING OFFICER. The Journal of the proceedings of the last trial day will be read.

The Secretary read the Journal of the Senate sitting for the trial of impeachment of Charles Swayne Wednesday, February 22.

Mr. FAIRBANKS. Mr. President, I ask for the adoption of the order which I send to the desk.

The PRESIDING OFFICER. The Senator from Indiana asks for the adoption of an order, which will be read.

The Secretary read as follows:

Ordered, That the session of the Senate sitting this day in the trial of the impeachment of Charles Swayne shall continue until 6 o'clock, when a recess shall be taken until 8 o'clock, and the session shall be continued until 10 o'clock, unless otherwise ordered.

Mr. LODGE. Mr. President, am I correct in the understanding that the recess referred to there is the recess of the Senate sitting as a court simply?

Mr. FAIRBANKS. It is.

Mr. LODGE. I merely asked the question because a brief executive session of the Senate is very necessary, and I did not want to have that cut off.

Mr. FAIRBANKS. The order simply relates to the recess of the Senate sitting in the trial of the impeachment case.

The PRESIDING OFFICER. If there is any question about the order it can be read again by the Secretary. The Secretary will read it.

The Secretary again read the order, as follows:

Ordered, That the session of the Senate sitting this day in the trial of the impeachment of Charles Swayne shall continue until 6 o'clock, when a recess shall be taken until 8 o'clock, and the session shall be continued until 10 o'clock, unless otherwise ordered.

The PRESIDING OFFICER. The question is on agreeing to the proposed order.

The order was agreed to.

Mr. FAIRBANKS. Mr. President, I ask for the adoption of the following order.

The PRESIDING OFFICER. The order will be read.

The Secretary read as follows:

Ordered, That the managers be allowed five hours for the argument of the case, the time to be divided between them as they may agree, but the concluding oral argument shall be by one manager and shall not exceed one hour.

Ordered, That counsel for the respondent be allowed five hours for the argument of the case, the time to be divided between them as they may agree.

The PRESIDING OFFICER. Is the Senate ready for the question on agreeing to the order?

Mr. BATE. Is it debatable?

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. BATE. Is it proper for us to say anything about that now? Is it a debatable proposition? For one, I wish to say that I object to this course of controlling the managers and counsel as to time. I want them to have their own time and to be the judge of it. I think we had better lay aside some other matters rather than push this too hurriedly. I do not think we ought to deny them sufficient time, and we ought to let them judge of this matter themselves and say how long they wish to speak, and let them make it known and let us conform to it.

The PRESIDING OFFICER. The question is on agreeing to the order.

The order was agreed to.

Mr. Manager PALMER. Mr. President, while this subject is under consideration, I make the following request—

Mr. BACON. I should like to make an inquiry relating to the order which was just passed. I am perfectly content that the order which has just been passed shall stand if the distribution of time is agreeable to the managers. If, however, they desire to occupy their time in different proportions—for instance, as to the length of time to be consumed in the concluding argument—I think their wishes ought to be consulted in that matter. I do not know whether the order as to that is agreeable to them. If it is, of course it is all right with me.

Mr. Manager PALMER. Mr. President, I will say that we do desire to make a little different allotment of the time. We wish to have the closing argument a little longer than an hour, and we expect to give the gentleman who closes the case a little more time. I suppose it will make no difference to the Senate as long as we do not take up more than the five hours.

Mr. BACON. I then move a reconsideration of the vote by which the order was agreed to, that the desire of the managers in that regard may be complied with. They do not desire, as I understand, any additional time, but they do desire some little different arrangement as to the time which shall be occupied in closing.

Mr. Manager PALMER. That is right.

Mr. BACON. Certainly they ought to have that right.

The PRESIDING OFFICER. The Senator from Georgia moves to reconsider the vote by which the order was agreed to. The order will be read.

The Secretary read the order, as follows:

Ordered, That the managers be allowed five hours for the argument of the case, the time to be divided between them as they may agree, but the concluding oral argument shall be by one manager and shall not exceed one hour.

Ordered, That counsel for the respondent be allowed five hours for the argument of the case, the time to be divided between them as they may agree.

The PRESIDING OFFICER. Will the Senate reconsider the vote by which the order was adopted?

The motion to reconsider was agreed to.

Mr. BACON. Now, I should like to have the Presiding Officer ascertain what is the desire of the managers as to the length of time which shall be occupied in the concluding argument.

Mr. Manager PALMER. We desire to have one hour and forty minutes for the concluding argument, and we will take the forty minutes off the time of those gentlemen who speak before the gentleman who concludes takes the floor.

The PRESIDING OFFICER. The Senator from Georgia moves that the order be amended by saying "shall not exceed one hour and forty minutes" instead of "shall not exceed one hour."

Mr. BACON. The one hour and forty minutes, as stated by the honorable manager, to be deducted from the entire time.

Mr. HALE. It does not increase the entire time?

Mr. BACON. It does not affect the limit of five hours.

Mr. HALE. And it is for the convenience of the managers?

Mr. FAIRBANKS. I see no objection to the amendment, if the parties to the case do not object.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

The order as amended was agreed to.

The PRESIDING OFFICER. The managers ask that it may be ordered by the Senate that any of the managers or counsel for the respondent having all or any portion of his argument in manuscript may deliver a copy of the same to the reporter, and any portion thereof, which for lack of time or to save the time of the Senate the managers or counsel shall omit to deliver or read, shall be incorporated by the reporter as part of the argument delivered, and any manager who does not address the court may file an argument before the close of the discussion.

Will the Senate agree to this request on the part of the managers?

Mr. TELLER. Mr. President, it seems to me that we ought to know what the printed argument is. We have not been in the habit in this body of giving leave to print speeches or parts of speeches or undelivered speeches. I think myself that it is an objectionable practice.

Mr. OVERMAN. We printed an argument yesterday, the brief of counsel on the other side, taking up forty or fifty pages, I think.

Mr. BACON. It is in the Record this morning.

Mr. OVERMAN. It is in the Record this morning.

Mr. TELLER. We may have done something unusual yesterday. My attention was not called to it. The presentation of a brief for our consideration when a case is pending is very different from an argument which goes into the Record without being delivered, and we have no means of seeing it before we shall be called upon to dispose of the case. I think the part of the request, so far as extending in the Record the undelivered part of a written argument is concerned, is very objectionable.

Mr. HIGGINS. On behalf of the respondent we are very reluctant to interpose any objection to any request made by the learned managers, but we can not forget that this is not a legislative, but is a judicial proceeding, and we do not think that it is consistent with our duty to the case to permit anything to be said that is not said in our hearing. To be sure, our right to reply is gone when we have concluded, but anything that may be said is subject to interruption by us in bringing it before the court, and to let something go in that we might not know what it is contrary to all experience in the trial of causes. Therefore we feel we ought to object.

Mr. HALE. I hope the Senator from Colorado [Mr. Teller] will withdraw his objection. While in the Senate we have a general rule against the printing of speeches, I can conceive of no trouble that will arise here and no difficulty, either, in the Senate understanding the case as presented provided some of it is printed without being read, nor can I conceive that the learned counsel for the defense will lose any real right by the Senate agreeing to this proposal on the part of the managers. It curtails time and gives an opportunity of a vote being reached at a comparatively early date—a consummation in which we are all interested. I hope, under these conditions, the Senator from Colorado will not insist on his objection; but should it be insisted upon, then I hope the Senate will grant the request of the managers.

Mr. HIGGINS. One word, Mr. President. If it is printed before respondent's counsel come to reply, we have no objection, but we do want to have a chance to reply.

Mr. Manager PALMER. If I may be allowed a word, Mr. President, I wish to explain the reason why we ask for this privilege. We have made no objection to curtailing the time, though this is the first time in the history of impeachment trials where the time of the managers has been curtailed. To be sure, the rule of the Senate provides that a case shall be closed by two managers, but there has never been any limit of time. We have consented to curtail the time of the gentlemen who are to speak in this case so that some of them shall have forty-five, some fifty, and some sixty minutes. Of course they will not be able to go over the case and do themselves or the case justice in that length of time. Their arguments can be printed in the Record and can be read afterwards by anybody who desires to read them.

Again, it was ordered by the Senate the other day that a brief on the part of the counsel for respondent should be printed, and a brief of forty-eight pages was printed about ten days ago, but we never got a chance to look at it until this morning, when it was printed in the Record. That brief pertains to jurisdictional affairs, and it is particu-

larly desired to print a brief of the law of the case to meet the brief on the part of the gentlemen on the other side; and I think it comes with mighty poor grace for them to object.

Mr. TELLER. Mr. President, I do not desire to cut off anybody who has not had a fair opportunity to present his views on this question. I only wanted to observe the usual practice of the Senate. I do not know that this is a case different from any other. I do not make an objection to its consideration now. The Senate can take a vote on it, or I will withdraw my objection in order to save the time of the Senate.

The PRESIDING OFFICER. Does the Presiding Officer understand that the objection is withdrawn?

Mr. TELLER. I withdraw it in the interest of progress.

Mr. HIGGINS. Mr. President, we do not object and would not object to any argument being printed instead of being made orally, except that we think it is just to us to have it presented and printed before we are called upon to answer it. That was the reason that upon yesterday, at the earliest possible date, we presented our argument on the question of jurisdiction. If the arguments that can not be delivered will be presented and put into the case and printed before our concluding argument in the case, we have not the slightest objection.

Mr. LODGE. Mr. President, I hope, in the interest of the public business, that the request of the managers, which seems eminently reasonable, will be granted without hesitation. The arguments that are not delivered will not fall upon the ears of the Senate before they vote. I do not think there can be any injustice done to anybody, but I do think the time has come when the public business should be considered. The managers have shown themselves most desirous to consult the public business, and I sincerely hope their request will be granted.

Mr. MALLORY. Mr. President, I may misunderstand the proposition, but, as I do understand it, it is that the arguments that are not made before this body sitting on the trial of this case, which will not have been heard by any member of this body, will be subsequently printed as a part of the arguments delivered in this body. I should like to inquire of the Chair if that is the proposition? If it is, I am opposed to it, and object to it.

The PRESIDING OFFICER. The request is this:

That any of the managers or counsel for respondent having all or any portion of his argument in manuscript, may deliver a copy of the same to the reporter, and any portion thereof, which for lack of time or to save the time of the Senate the managers or counsel shall omit to deliver or read shall be incorporated by the reporter as part of the argument delivered, and any manager who does not address the court may file an argument before the close of the discussion.

Mr. MALLORY. On that proposition, Mr. President, it might very readily occur that an argument which was not delivered before this body in the trial of this case, may be printed in the Record, as is done in another body, some time after the disposition of the matter, without having been submitted to those who are to decide the case. If that is so—and I think it is from the reading of the request, as I understand it—I am opposed to it, and I object.

Mr. SPOONER and Mr. BACON addressed the Chair.

The PRESIDING OFFICER. The Senator from Wisconsin [Mr. Spooner] is recognized. The Presiding Officer will remark that strictly under the rules, if this question is to be debated, the Senate should either retire or close its doors, but by unanimous consent this discussion has

gone on, and unless some motion is made the Presiding Officer will not enforce the rule.

Mr. SPOONER. Mr. President, I am as anxious as the Senator from Massachusetts [Mr. Lodge] or any other Senator that the proceedings in this case may be expedited. I think that this is public business, and I shall be very sorry, as one Senator, and will not consent that there shall be in this matter any departure from those rules of procedure which everywhere in the world are acknowledged to be just and are usual in criminal or quasi-criminal cases. I can see no objection to the publication or the printing in the Record of any argument on one side which the other side seasonably will have opportunity to peruse and to answer.

This is a case which involves, of course, the interests of the people. It involves vitally the interests of the respondent. Whether technically this is a court or not, it pronounces a sentence or judgment. It is a court or a tribunal of first instance and of last resort. There is no appeal from its decision. If it commits an error, there is no reviewing tribunal.

Nowhere in any judicial tribunal in the country, I think, in a matter involving not simply the right to hold an office, but the right ever to hold an office of honor, trust, or emolument, would it be tolerated that an argument should be made and communicated to the court without opportunity to counsel on the other side to reply to it as fully as they might be advised.

Now, if the managers have some argument to submit in answer to the brief which is printed in the Record this morning, that, I should think, would be entirely proper to be printed, but that the managers shall be permitted to submit to the Senate, after the counsel for the respondent have finished their argument, further argument on any of these charges or these articles I think is against the justice of judicial procedure. The Senator from Florida [Mr. Mallory] I understand to object to that. If he did not, I should.

Mr. DANIEL. I ask that that request may be read again, Mr. President.

The PRESIDING OFFICER. The Secretary will read the request of the managers.

The Secretary read as follows:

That any of the managers or counsel for respondent, having all or any portion of his argument in manuscript, may deliver a copy of the same to the reporter; and any portion thereof, which for lack of time or to save the time of the Senate, the managers or counsel shall omit to deliver or read, shall be incorporated by the reporter as part of the argument delivered; and any manager who does not address the court may file an argument before the close of the discussion.

Mr. DANIEL. Mr. President, my disposition would be to vote for any reasonable request made by the managers or by counsel for the respondent here; but I could under no circumstances vote affirmatively on that request. In my opinion it violates the fundamental principles of English and American law. Every accused person is entitled to be present with his counsel, to have an opportunity to hear every charge and every word of argumentative speech that is made against him, and also to have opportunity to respond thereto. It seems to me that a statement of the case carries an enforcement of its justice. If that request were granted a most serious and grave argument might appear in print after this case was heard, presenting it in aspects which had not occurred either to the accused, to his counsel, or to any of his judges.

It might be, though, and very properly, that if the managers desire to submit any views upon any of these questions of jurisdiction, or the nature of offenses that are cognizable here, such as are considered in the essay which is published in this morning's Record, they might have opportunity to reply to that essay or to submit any views of their own before this case goes to oral argument. But that an argument should be addressed to a jury, or what may be considered as a quasi jury, and published after the arguments are over, would be paradoxical to all ideas of justice and to the fixed principles of American law as they exist in every State of this Union and in all of our national adjudication; indeed, which exists wherever the English people have planted a colony or have erected a court of justice.

I would hope, therefore, that the request might be modified, and that it might be put in a form which would meet the objections which have been made to it in its present form and give full opportunity to the managers, as has been given to the counselors of the accused, to present, before they come to sum up the case, any consideration as to the nature of the offense, the jurisdiction thereof, or presenting it in any light that they might be pleased to do, so that those who have to pass upon it might have it before them, and so also that those who might wish to rebut it would have their opportunity to do so in an equal way.

Mr. LODGE. Mr. President, I merely want to call attention to the fact that this destruction of law and justice now before us, by allowing the managers to file arguments, has already been perpetrated by the Senate in a previous case. In the Andrew Johnson impeachment trial it was ordered—

That as many of the managers and of the counsel for the President as desire to do so be permitted to file arguments or to address the Senate orally, but the conclusion of the oral argument shall be by one manager, as provided in the twenty-first rule.

So that it is not unheard of.

Mr. SPOONER. It ought to be unheard of.

Mr. BACON. Mr. President, it may be that it is practicable to modify the request so far as to enable the managers to file these written arguments before the conclusion on the part of the counsel for the respondent. But aside from that, it occurs to me that it would certainly be unjust to limit in a case of this kind counsel on either side as to time, and when the matter is presented there is a probability that they will not be able within that time to present in full their views. It is unjust, then, to limit and deny them the opportunity to put on record what is their argument in the case.

Now, as to what modification may be made to prevent an undue consumption of the time of the Senate under the present emergency—because we do stand facing an emergency—and at the same time do justice both to counsel for the respondent and to the managers on the part of the House, I am not now prepared to say. But something ought to be done. It does occur to me to be the height of injustice to do what we are told here to-day is unprecedented, in limiting the managers on the one side or counsel on the other as to the time they shall occupy, and at the same time deny them the opportunity to file argument which shall be incorporated in the record.

Mr. Manager PALMER. Mr. President, on the part of the managers, I will accept the suggestion that the arguments, whether law briefs or others, shall be filed and presented before the concluding arguments on the part of the respondent.

Mr. DANIEL. Mr. President, I rise to an inquiry.

The PRESIDING OFFICER. The Senator from Virginia will state his inquiry.

Mr. DANIEL. The remark made by one of the honorable managers in this case leads me to inquire whether or not each side have been allowed all the time they desire for the proper presentation of their cause? I should be very glad if the honorable managers and the counsel for the respondent would state to the Senate whether or not they have sufficient time, in their judgment, to make a just and full presentation of the cause in their hands.

Mr. Manager PALMER. Well, Mr. President, if I may be permitted to answer the inquiry, I will say that we have yielded to the evident desire of the Senate, and have made the time just as short as we possibly could. Of course, we would have been very glad to have had more time; but in yielding the time limit we did expect to have the opportunity of completing the arguments that were partly made before the Senate by printing them in the Record. We have agreed to the five hours' limit; but it was on the tacit understanding, at least, that a manager who made an argument should be allowed to finish what he could not speak orally by printing it in the Record.

Mr. THURSTON. Mr. President, the time allowed to counsel for the respondent by the Senate is entirely satisfactory to us in view of our knowledge of the grave public duties that this Senate must perform in a very short time.

So far as the printing of arguments is concerned, the suggestion of the manager, if carried out, is satisfactory to us, so that any arguments to be printed without having been delivered in the Senate may be presented in sufficient time that they may appear in the Record for our examination before we are called upon to answer to them.

Mr. BACON. Mr. President, in view of the fact that the argument is very soon to begin, I did not understand by the suggestion which I made that it would necessarily have to appear in the Record. I should suppose that if counsel for respondent were furnished with copies, either typewritten or printed, it would be a sufficient compliance with the designs of the modification.

Mr. MONEY. Mr. President, in justice to the managers, I think they should be allowed to print anything that they may find necessary in answer to the matters printed by the respondent's attorneys, without having been orally delivered or read; but I am led to inquire what is the utility of printing in the Record, after the Senate sitting in an impeachment trial shall have decided the case, matters which were intended only to produce an effect upon the minds of the Senate?

We are not going to vote, as a Senator near me says sotto voce, until the evidence is concluded; but this is a case where it is asked that the managers or the respondent be permitted to print what has not been delivered in the Senate sitting as a court, or rather, sitting in an impeachment trial; for I do not consider it a court. I can not see why anything that is not to have any effect upon the judgment of the Senate should have any place in the Record at all. It may be said that the gentlemen who have good arguments with no time to deliver them should round out the Record with part of their arguments which they had no opportunity to deliver, but the inquiry is, What good can be gained by printing them after the Senate has pronounced its judgment? It can not affect anybody. It is mere surplusage; and I, for

my part, do not see why anything should be printed in the Record that is not delivered before the Senate either in print or orally. It certainly can be of no service in the prosecution of this case either to the managers or to the respondent.

THE PRESIDING OFFICER. The Presiding Officer does not understand that this request, if granted, would allow the printing of anything after the arguments shall have been closed on the part of the managers or counsel for the respondent. One of the managers has suggested a modification, and perhaps the whole request had better be read as modified.

The Secretary read as follows:

That any of the managers or counsel for respondent having all or any portion of his argument in manuscript may deliver a copy of the same to the reporter, and any portion thereof, which for lack of time or to save the time of the Senate, the managers or counsel shall omit to deliver or read, shall be incorporated by the reporter as part of the argument delivered, and any manager who does not address the court may file an argument before the close of the discussion: *Provided*, That all briefs and arguments shall be printed before the closing argument for the respondent begins.

THE PRESIDING OFFICER. Is the Senate ready for the question?

MR. BATE. I want to suggest there, Mr. President, that if they print this the Senate have a right to see that print and to read it or to hear it. The Senate is at last the judge; we are a quasi jury, and we certainly ought to have a right to see, to read, and digest the arguments.

THE PRESIDING OFFICER. The Presiding Officer supposes it means printed in the Record from day to day.

MR. MANAGER PALMER. Yes.

MR. BATE. Suppose they close this case or finish it on to-morrow; then it is complete, and the speech or argument is given to the reporter and we will not see it or hear of it. I think, Mr. President, if I may be pardoned for saying so, we made a mistake in limiting these arguments. We ought to conform to the rules of practice in such cases. We have no cloture rule in the Senate, and a Senator may speak as long as he pleases; but we never publish speeches here that are not delivered, and it is not in conformity to our custom at all to limit us in our speeches, and I think we are in error about this.

THE PRESIDING OFFICER. Is the Senate ready for the question of granting the request of the managers? [Putting the question.] By the sound the "ayes" have it. [A pause.] The "ayes" have it, and the request as modified by the managers is granted.

Are counsel for respondent ready to proceed?

MR. BACON. Before counsel for respondent proceeds, there is a witness to whom several Senators desire to propound some questions. I ask that Mr. W. A. Blount be recalled.

THE PRESIDING OFFICER. The Presiding Officer understands that the witness was recalled yesterday by telegraph and is in attendance. The Sergeant-at-Arms will find Mr. Blount. [After a pause.] The Sergeant-at-Arms informs the Presiding Officer that Mr. Blount appeared this morning; he is now absent, but will probably return.

MR. BACON. He was in the building this morning. When he returns it will be time enough.

THE PRESIDING OFFICER. There is no doubt that he will be found. In the meantime, if the Senator from Georgia does not object, the respondent will proceed with other witnesses.

Mr. BACON. We are content with that, Mr. President.

Mr. HIGGINS. Mr. President, on behalf of the respondent, I make the offer of a certified copy of the proceedings of the meeting of the board of county commissioners of Leon County, Fla., December 10, 1904. It is the board which was spoken of by a witness yesterday—Milton Jackson. I have presented the paper to the learned chairman of the managers, and would ask if there is any objection to it.

Mr. Manager PALMER. Yes, sir. We object to it as irrelevant, incompetent, and tending to throw no light on the subject-matter under discussion.

Mr. HIGGINS. Mr. President, the Senate took a vote yesterday as to whether or not a witness should be allowed to answer as to a subject-matter of which the substance of this paper is a vital part, and he was permitted to answer. We here have obtained a copy, certified to by the clerk of the body in which the resolution was adopted. We conceive it of the highest importance as fixing a date and also establishing an act, through the testimony of this witness of whom I have spoken, by Judge Swayne at the very beginning of this period of dispute as to residence; and as such we think it absolutely pertinent to the issue, part of the *res gestae*, and eminently proper to be admitted.

The PRESIDING OFFICER. The Presiding Officer has no knowledge whatever either of the contents of the paper or generally what the paper is about.

Mr. HIGGINS. I will include that in my offer. It is that the county commissioners of Leon County, Fla., in which is situated the city of Tallahassee, adopted a resolution at that time extending to Judge Swayne as the judge of the northern district of Florida, having to make a residence within his district, an invitation to reside in the city of Tallahassee. That evidence is before the court. The matter was brought to the attention of a witness (who has been examined here) by the Judge, who told him, the witness testified, that he would not live in Tallahassee because he had taken his residence in Pensacola. It is a fact and a circumstance connected with the act of residence.

The PRESIDING OFFICER. This paper is a certified copy of the action of the board of county commissioners, held in Tallahassee, being an invitation sent to Judge Swayne to make his permanent home in Tallahassee. The Presiding Officer does not see how it is evidence in this case. If any Senator desires, he will submit the question to the Senate. [A pause.] It is not admitted.

Mr. HIGGINS. Call Charles F. Warwick.

CHARLES F. WARWICK sworn and examined:

By Mr. HIGGINS:

Q. Where do you reside?—A. In Philadelphia.

Q. What is your occupation?—A. I am an attorney at law.

Q. How long have you been such?—A. Since 1874.

Q. Have you held any official positions in the city of Philadelphia?—A. Yes, sir; I have.

Q. What, sir?—A. I was for eleven years corporation counsel for the city, or, as we call it, city solicitor, and for four years I was mayor—from 1895 to 1899.

Q. Was there any interval between your going out of the office of city solicitor and your entering the office of mayor?—A. There was not.

Q. What year was it that you ceased to be city solicitor?—A. On the first Monday of April, 1895.

Q. And you were elected mayor just preceding that, I suppose?—A. I was elected mayor of the city in February, 1895, and held office for four years.

Q. Do you know Judge Charles Swayne?—A. Very well.

Q. How long have you known him?—A. Ever since I came to the bar. I think I knew him before that intimately.

Q. Intimately, you say?—A. Intimately.

Q. Do you remember the fact of the act of Congress curtailing his district?—A. I do.

Q. Will you please state whether on or about or after that time, and fix the time yourself, you had any conversation with him and he with you concerning where he would make his residence in Florida?

Mr. Manager PALMER. Wait a moment. We object to that testimony as being irrelevant and incompetent. The declaration of the respondent as to where he intended to reside is, in our judgment, not evidence in this case.

Mr. HIGGINS. I think the Senate has already passed on that question, Mr. President.

Mr. Manager PALMER. It may pass on it again.

The PRESIDING OFFICER. The Presiding Officer will submit the question to the Senate. The question will be repeated by the reporter.

The reporter read as follows:

Q. Will you please state whether on or about or after that time, and fix the time yourself, you had any conversation with him, and he with you, concerning where he would make his residence in Florida?

Mr. HIGGINS. "Or where he had made it." That is the modification.

Mr. McCUMBER. Mr. President, before submitting the matter to the Senate, I wish counsel would inform the Senate on what principle of law he justifies a proposition to introduce in evidence a self-serving declaration of a party defendant in a criminal proceeding.

Mr. HIGGINS. Mr. President, I had the honor to submit some remarks upon that question yesterday. We contend that such an assertion made before the present impeachment proceedings were mooted or expected, or, as the maxim of the law has it, *ante litem motam*, is itself essentially a verbal fact. Residence is made up of two elements—intention and action. Intent without action is futile to make a residence, but intention becomes a most important part of the proposition in the end as to what constitutes residence. As I have said and admitted, alone it will not make it, but it is a part of a whole in which it takes its own due proportion.

Now, if this were a self-serving assertion, made after the fact, if it came into the case in such a way, it would be so clearly objectionable that it never would be presented by counsel for the respondent. But we submit it is a most important thing. When the good faith of the conduct of the respondent is in dispute, we bring here a witness of the highest character and standing to prove what at that time was the expressed intention of the respondent in respect to establishing his residence. I think, therefore, that while admitting the principle upon which the distinguished Senator raises his question, we have brought this within an exception thereto. If we had expected that this question

would be raised again to-day, after it had been disposed of yesterday, we would have come prepared with authorities to submit.

. Mr. Manager PERKINS. Mr. President, just a word. I did not again object to-day because the Senate yesterday, I must confess somewhat to my surprise, allowed a similar question to be answered. Doubtless it was that the legal question involved was not presented by me with the clearness with which it has now been stated by the Senator from North Dakota. The gentleman on the other side misstates the question and avoids the inquiry made by the Senator. It is not, Can Judge Swayne's intention be proved? His intention is a question that perhaps can be proved, but Judge Swayne's intention, no more than any other thing in Judge Swayne's behalf, can be proved by Judge Swayne's own statement.

It is offered to prove here, what? Judge Swayne's intention, by the fact that Judge Swayne said it was his intention. As the Senator from North Dakota properly says, it is an endeavor to prove something in behalf of the defendant by his own statement. There is the inherent vice of the question, and I think the failure perhaps to catch that point yesterday was the reason the ruling was made by the Senate.

Mr. HIGGINS. Only a word in reply. The learned manager who would confine the evidence of intention to acts, when, from the very great case in 3 Washington Report down, it is the established law as to citizenship, as to residence, as to domicile, that they are each and every one of them made up of two articles—of intent and of action—and that if you can not prove anything by words you are confined merely in your evidence to acts. That is not the law, with all due respect to my learned friend.

Mr. Manager OLMSTED. May I add a word? I again call the attention of the Senate to the fact that this precise question was before the Senate of the United States in the impeachment trial of Andrew Johnson, where his counsel offered to prove, for the purpose of showing the intent of the President of the United States, his statements to other parties. There was then cited the celebrated English case of *Hardy*, reported in 24 State Trials, page 1096, where it was held by the House of Lords:

Nothing is so clear as that all declarations which apply to facts, and even apply to the particular case that is charged, though the intent—

Mark the words—

though the intent should make a part of that charge, are evidence against a prisoner, and are not evidence for him, etc.

Upon the citation of that authority and the argument of the case the United States Senate decided, by a vote of nearly 4 to 1, that such a statement made by the respondent could not be proved by the party to whom he made it.

Mr. HIGGINS. I have not had a chance to reply to that. I agree to that law, for that was not a case of residence nor of domicile nor of citizenship. It was a case of ordinary criminal conduct, where the intent is inferred from the act. But the difference is laid down in the law, that residence is a mixed question of law and fact; that it is made up of action plus intent, and intent plus action, and therefore it is to be differentiated entirely from *Hardy's* case, and goes back to another class of authorities entirely.

The PRESIDING OFFICER. As the Presiding Officer is about to submit the question to the Senate, the reporter will read the question propounded by counsel for the respondent.

The reporter read as follows:

Q. Will you please state whether on or about or after that time, and fix the time yourself, you had any conversation with him, and he with you, concerning where he would make his residence in Florida?

Mr. HIGGINS. "Or where he had made it." That is the modification.

The PRESIDING OFFICER. Shall the witness be permitted to answer the question. [Putting the question.] In the opinion of the Presiding Officer the "noes" have it. The "noes" have it, and the answer is excluded.

Mr. HIGGINS. Call Doctor Crossam.

J. WILLARD CROSSAM, sworn and examined.

By Mr. HIGGINS:

Q. Where do you reside?—A. Centerville, Del.

Q. What is your age?—A. Thirty-four.

Q. What is your occupation?—A. Physician.

Q. Are you a doctor of medicine?—A. Yes, sir.

Q. How far is Centerville from Guyencourt?—A. Probably 2 miles or two miles and a half.

Q. Are you or not the family physician of Mrs. Anne Swayne?—A. I am.

Q. Her personal physician?—A. I am.

Q. As such are you familiar with that household?—A. I am.

Q. Where did you graduate as a physician?—A. The University of Pennsylvania.

Q. How long have you been a practicing physician?—A. Ten years.

Q. Do you know the respondent, Charles Swayne?—A. I do.

Q. And his family?—A. I do.

Q. Will you please state, within your knowledge, when and for how long during the years from 1894 on they have lived at the Swayne house at Guyencourt?—A. In 1896 I became familiar with the Swayne household. I never remember of Judge Swayne or his family residing there, only on a visit.

Q. On a visit; at what time of the year?—A. Probably during the months of July and August.

Q. Would you see them there then?—A. At times I did.

Q. Did you ever see them there later than that, or earlier?—A. Not to my knowledge, with the exception of one time, when they were summoned on account of sickness.

Q. Whose illness was that?—A. That was Henry G. Swayne's wife.

Q. Do you remember what year that was?—A. That was in 1902.

Q. Do you know what time of the year Mrs. Swayne lived there and what time she left?—A. She generally came in in the spring, as soon as the weather was favorable for a woman of her age to travel, and returned, probably, in November.

Q. But did not spend the winters there?—A. No.

Q. You were not called on to attend her during the winter time?—A. No, sir.

Mr. HIGGINS. Cross-examine.

Mr. Manager PERKINS. We have no questions to ask.

Mr. HIGGINS. I understand Mr. Blount is now accessible.

W. A. BLOUNT recalled.

Mr. CULBERSON. Mr. President, I present several questions to be propounded to the witness, Mr. Blount, and ask that they be read. They are numbered.

The PRESIDING OFFICER. The questions will be read in the order in which they are presented.

The Secretary read as follows:

Q. Did Judge Swayne ever, within your knowledge, register or cast a vote in Florida? If so, when and where did he do so?

A. Not to my knowledge.

The Secretary read as follows:

Q. Did Judge Swayne ever, within your knowledge, pay a poll tax in Florida? If so, when and where was it paid?

A. Not to my knowledge.

The Secretary read as follows:

Q. State any fact within your personal knowledge, aside from any mere claim of legal residence, tending to show that Judge Swayne, prior to 1900, had, in Pensacola, Fla., or elsewhere in his district, a house, residence, or place of abode for himself and family.

A. It is a little difficult to answer that in that compendious shape without recollection. I do not know that I know of anything except the fact that probably in 1900 he rented a house——

Mr. CULBERSON. I ask that the question be again read to the witness on that particular point.

The Secretary again read the question, as follows:

Q. State any fact within your personal knowledge, aside from any mere claim of legal residence, tending to show that Judge Swayne, prior to 1900, had, in Pensacola, Fla., or elsewhere in his district, a house, residence, or place of abode for himself and family.

A. Upon the spur of the moment and without being able to say that my answer is exhaustive, I can say that I know of nothing tending to show that, in my opinion, except the fact that probably in 1900——

Mr. CULBERSON. Mr. President——

The PRESIDING OFFICER. The question is confined to the period prior to 1900.

The WITNESS. Before 1900?

Mr. CULBERSON. That is the question.—A. I beg your pardon. I did not catch that. I do not.

The Secretary read as follows:

Q. State any fact within your personal knowledge showing, or tending to show, that Judge Swayne prior to 1900 exercised any right, performed any duty, or took advantage of any privilege as a resident of Pensacola, Fla., or his district.

A. I have no knowledge of his performance of any such act or taking advantage of any such privilege that I now remember.

The Secretary read as follows:

Q. State fully how long, if at all, Judge Swayne, prior to 1900, remained in Pensacola, Fla., after the transaction of the business of the court.

A. His custom was to leave immediately after the transaction of the business of the court. I can not say, with reference to any specific instance, as to how long he remained, but I can simply say that it was his almost invariable, if not his invariable, custom to go somewhere immediately that the court adjourned.

The Secretary read as follows:

Q. Were you counsel for O'Neal in the contempt proceedings against him before Judge Swayne?

A. I was.

The Secretary read as follows:

Q. Did you raise a question of jurisdiction of the court in those proceedings? If so, please state such question fully and how it was raised.

A. I raised the question by a demurrer—

Mr. THURSTON. Mr. President, while ordinarily we would have no objection to the answer which we anticipate, yet the O'Neal case is all here of record, and objection was made yesterday to our asking the witness Greenhut as to the injury he received and which was exhibited in court at the time of that trial. The objection was based upon the fact that the complete record being here we could not go outside of it. Therefore, in return, I make the same objection, that the record of the O'Neal case shows every proceeding that was had therein, including any objection that may have been taken to the jurisdiction.

The PRESIDING OFFICER. This question is propounded by a Senator. If objection is made to an answer being given, the Presiding Officer will submit to the Senate the question whether it shall be answered.

Mr. THURSTON. It was my intention, of course, not to make the objection to the question, but to the answer being given by the witness.

The PRESIDING OFFICER. That is the matter which will be submitted to the Senate.

Mr. Manager OLMSTED. Before that is done, may I make a suggestion? This is a very different matter from the testimony which was sought to be brought out by Greenhut. There the attempt was to prove by him the extent of his injuries in a street combat, with no evidence that the facts as to which he was to testify had been before the court. Our objection was not because of the fact that it was in the record, but that it was proposed to prove something as an excuse for the judge which had not been before him at the trial of the case, while here this witness is asked to testify to what occurred at the trial of the contempt case.

The PRESIDING OFFICER. The Secretary will read the question.

The Secretary read as follows:

Q. Did you raise a question of jurisdiction of the court in those proceedings? If so, please state such question fully and how it was raised.

The PRESIDING OFFICER. Shall the witness answer the question? [Putting the question.] In the opinion of the Presiding Officer the ayes have it. [A pause.] The ayes have it, and the witness will answer.

The WITNESS. Please read the question again.

The Secretary read as follows:

Q. Did you raise a question of jurisdiction of the court in those proceedings? If so, please state such question fully and how it was raised.

A. I did raise such a question by a demurrer to the affidavit of Greenhut, which was the foundation of the proceedings. The question raised was, as I have said, one of jurisdiction. I took the position that necessarily O'Neal was not an officer of the court, and consequently that branch of the statute of 1831 did not apply to him. I took the further position that the offense committed by him, if any,

was not in the presence of the court, or so near thereto as to obstruct the administration of justice; and I took the further position that under the last paragraph of the first section of that statute it was necessary that there should be an affirmative order, mandate, decree, or process of the court and that the alleged offender should have obstructed the execution of that order, and that in this case there was no such order or mandate, etc. I think that completes the scope of my argument upon the subject and the presentation of it to the judge.

Examined by Mr. HIGGINS:

Q. Was the prosecution represented by counsel?—A. Yes.

Q. Who?—A. Mr. Tunison.

Q. What argument was advanced by him in opposition to your proposition as to the jurisdiction?—A. His principal discussion was upon the first branch of the argument I made—that this was not in the presence of the court, or so near thereto as to obstruct the administration of justice, he taking a position negating that which I had taken. The latter part of my proposition I do not think he attempted to meet. At least, in my opinion, he did not meet it at all.

Q. He did not admit it?—A. No.

Q. So that resistance was made, as far as counsel could, to the proposition that the act of Greenhut in bringing the suit was not because of an affirmative order or decree of the court?—A. There was no specially active resistance to that proposition. As I have just stated, Mr. Tunison seemed to pass it over to a large extent.

Q. Now, was there or was there not introduced into the record a further statement on behalf of O'Neal, or by him, putting in the record the fact that the location of Greenhut's store, where this encounter took place, was some distance from the court room, and that the Judge was not holding any court at the time, and was not in the district at the time?—A. My recollection is that I, under the doctrine in the Cuddy case, attempted to get that statement before the circuit judge upon habeas corpus.

Q. Did it not go before him on habeas corpus, and is it not referred to in his opinion, that it made no difference how far it was from the court room or whether the court was in session or not?—A. I have not seen the opinion since it was printed. I think it is.

Q. If you think so, then that would be overruling your contention by the circuit court of appeals when you invoked its authority?—A. Distinctly; that is, by Judge Pardee, with whom were associated as circuit judges Judges Shelby and McCormick—not the circuit court of appeals.

Q. Now, one other question, Mr. Blount. When you say that the Judge would leave after the sessions of the court, I did not catch your answer as to whether it was limited as to any particular year or years. I would ask you as to how far your answer extended in that respect?—A. I understood it to apply to the period before 1900.

Q. Do you know where the Judge went when he did leave?—A. Not in every instance. I know sometimes where he first went, but I did not keep up with his movements except so far as it was necessary for me to write to him on my own business.

Q. Of course, the records in the other courts can show where he was holding court out of his district?—A. I know nothing about that, except on one or two occasions I had occasion to write to him when holding court.

Q. Nor do you undertake to say how long a time he did spend, as a matter of fact, in Pensacola?—A. You mean during those years?

Q. Yes.—A. I had not said, but I do have an idea; yes.

Q. Well?—A. Of course I have to give a rough average. I should say it did not exceed two months in each year.

Q. As far as you know?—A. As far as I know.

Mr. HIGGINS. That will do, sir.

Reexamined by Mr. Manager PALMER:

Q. In point of fact was the court in session at the time when this O'Neal difficulty occurred?—A. It was not.

Q. Was Judge Swayne in Pensacola at that time?—A. He was not.

Q. When you did write to Judge Swayne, he being absent from his district, where did you address your letters generally?—A. Sometimes to Guyencourt; sometimes, in the early part of the period that has been mentioned, to St. Augustine, and again where he was holding court. I kept no track of him except through the clerk. I would go to the clerk and ask him where the Judge was and then write to him at the place indicated to me by the clerk.

Mr. BACON. Mr. President, I have some questions which I desire to propound to the witness and reference is made in them to his former testimony.

The PRESIDING OFFICER. A question has been sent to the desk by the Senator from Alabama [Mr. Pettus], which will be first stated.

The Secretary read as follows:

Q. On the trial of O'Neal did you read to the judge the statute of 1831, defining contempts?

A. Yes; at first entirely, and I referred to the several portions of it several times.

The PRESIDING OFFICER. The Senator from Georgia [Mr. Bacon] propounds some questions.

Mr. BACON. Mr. President, I have some questions to propound to the witness, and as they make reference to testimony I will send to the desk the book, for the convenience of the witness, that he may refer to it. The pages are indicated in the questions, and there are also marks in the book.

The PRESIDING OFFICER. The first question sent to the desk by the Senator from Georgia will be read.

The Secretary read as follows:

Q. Was the United States district attorney in and for the northern district of Florida in the city of Pensacola on Sunday morning when Judge Swayne telephoned you information that suit had been brought against him and asked you what you thought about it?

A. I think that he was. I have no reason to think otherwise. He had been in court during the preceding week, and I presume he was there on Sunday.

The Secretary read as follows:

Q. Was the United States district attorney in the court room or in the city of Pensacola on Monday when you made the suggestion to the court that a contempt of court had been committed by Messrs. Paquet, Belden, and Davis?

A. I do not know. I have no recollection on the subject.

The Secretary read as follows:

Q. When last upon the stand, replying to a question as to when you filed in writing the suggestion that a contempt had been committed, you said: "I think just after the adjournment of the court." (See p. 363.)

The WITNESS. I recollect it.

The Secretary read as follows:

Q. Then, replying to the next question, page 364, on the same subject, you said: "I did not file it in writing. I sat down at the desk and wrote it on the motion docket." You will now please state when there was prepared the written motion of November 11, 1901, which purports to have been signed by you, and which is found on page 239 of the record of the impeachment proceedings.

A. I endeavored in my testimony to be entirely accurate and to make a distinction between filing and writing upon the docket. At first, I recollect, I said I filed the motion, but I corrected myself by saying I sat down at the desk and wrote on the docket. It was in writing upon the docket and signed by me. Does that cover the question?

Mr. BACON. I should be glad to have the question again read. I did not fully catch the answer of the witness.

The Secretary read as follows:

Q. When last upon the stand, replying to the question as to whether you filed in writing a suggestion that a contempt had been committed, you said, "I think just after the adjournment of the court." (See page 363.) Then replying to the next question (page 364) on the same subject, you said, "I did not file it in writing. I sat down at the desk and wrote it on the motion docket." You will now please state when there was prepared the written motion of November 11, 1901, which purports to have been signed by you and which is found on page 239 of the record of the impeachment proceedings.

A. Supplementing my answer just now, so as to meet the full question, it was prepared immediately before or immediately after the adjournment of court; my recollection is immediately afterwards. As I testified the other day, I made the suggestion verbally, and thought that that was the only thing that I was going to do. But Judge Swayne requested that Mr. Fisher and I should proceed with the matter, and also it was suggested that a written form would be better, and I sat down before the motion docket and placed it upon the motion docket and signed it.

The PRESIDING OFFICER. The next question propounded by the Senator from Georgia [Mr. Bacon] will be read.

The Secretary read as follows:

Q. It has been testified that in pronouncing sentence upon Messrs. Belden and Davis, Judge Swayne did so orally, and that he did not at the time read from any paper (p. 438). You will please now state who prepared and wrote the order of sentence signed by Judge Swayne November 12, 1901, found at page 242. Further, if you know who prepared said order, please state when the same was prepared.

A. I do not know either of those things. As soon as Judge Swayne had orally given his opinion and pronounced the sentence I left the court room, and any further proceedings were without my knowledge, and I know nothing of it now except what I see from the record.

Mr. BACON. I do not know whether the witness's last answer covers this interrogatory or not, but I propound it to be sure.

The Secretary read as follows:

Q. Do you know who prepared and wrote the order of commitment of E. T. Davis of November 12, 1901 (see p. 242), and also the corresponding commitment of Simeon Belden (p. 248) on the same date? If so, when were said commitments prepared and written?

A. I do not know who wrote them nor when they were prepared.

Mr. BACON. Now, one other question, Mr. President.

The Secretary read as follows:

Q. Was Fisher, with whom you conferred as to the question of commitment and who was appointed with you by the judge in the contempt proceedings, both a party defendant and counsel for defendants in the McGuire case, as you were yourself?

A. He was a party defendant. My recollection is that he was not an attorney of record, though he was assisting and counseling and advising with me at every point in the case.

Mr. MORGAN. Mr. President, I have some questions that I desire to propound to the witness.

The PRESIDENT pro tempore. The Senator from Alabama propounds the following question.

The Secretary read as follows:

Q. When did you first know that Judge Swayne was contracting with a view to obtain a title to or an interest in lot No. 91 in the tract of land claimed by Florida McGuire?

A. I never knew of it until Judge Swayne announced on the morning of the 5th of November that negotiations had taken place, and that those negotiations ceased by the return of the deed.

The Secretary read as follows:

Q. How did you gain that information, and from whom?

Mr. MORGAN. That has been answered.

The WITNESS. Only in that way and at that time.

The Secretary read as follows:

Q. Did you converse with Judge Swayne about the purchase by him or a member of his family of the land claimed by Florida McGuire before this suit came on for trial? What was said by both of you in such conversations?

A. Neither at that time, nor before that time, nor at any other time.

The Secretary read as follows:

Q. Being defendant in the suit of Florida McGuire, was it for that reason that you volunteered to act as amicus curiæ in moving that Belden and Davis and Paquet be punished for contempt, or was it only your desire to protect the honor and dignity of the court that moved you to enter a motion to punish them for contempt?

A. If I know myself I think it was a desire to have the dignity of the court protected in order that they might be punished for contempt. It was a matter absolutely immaterial to me whether I was or was not a defendant in the suit. I did not care whether those attorneys remained in the suit or did not remain. I did not fear them, or either of them, and if I had been asked to select antagonists that I desired to accomplish a victory against I should have selected those three gentlemen.

The Secretary read as follows:

Q. Were you not disappointed and indignant, and were you not angry, when the case was discontinued in which you had a personal interest?

A. I was disappointed because I desired to try the case; as to being angry, I think not. I have no recollection of being so.

Mr. BACON. Mr. President, I propound the following question.

The PRESIDING OFFICER. The Senator from Georgia propounds the following question:

The Secretary read as follows:

Q. Where was the recognized and admitted residence of the United States district attorney in November, 1901?

A. In Pensacola, Fla.

The PRESIDING OFFICER. Do Senators desire to propound further questions to this witness?

Reexamined by Mr. HIGGINS:

Q. Mr. President, I wish to ask a question. Who was the United States attorney at the time of the O'Neal proceeding?—A. Mr. John Egan.

Q. Was he or not, Mr. Blount, at that time counsel for the American National Bank, the bank of which O'Neal was the president and that was the defendant in the suit by Greenhut?—A. He was.

Q. Was that or not a reason why he did not take charge of the proceedings against his client O'Neal in the contempt proceedings?—A. I do not know; I was trying to refresh my recollection. It seems to me that he mentioned the matter to me, but upon the spur of the moment I can not say.

Q. I think I have asked you the question before, but I can not recall your answer. Who did represent the prosecution against O'Neal in the contempt proceedings?—A. Mr. B. C. Tunison.

Q. Was Egan the United States attorney at the time of the Davis and Belden proceedings?—A. Yes.

Mr. HIGGINS. That will do, sir.

The PRESIDING OFFICER. Is that all of this witness?

Mr. HIGGINS. That is all, I think.

Reexamined by Mr. Manager PALMER:

Q. Wait half a minute. Mr. Egan did not have anything to do with Belden and Davis in the Florida McGuire case, did he?—A. You mean as attorney or otherwise?

Q. Yes.—A. I do not think so.

Q. There was no reason why he should not have appeared and prosecuted the contempt against Belden and Davis, that you know?—A. I do not know of any reason why he should not.

The PRESIDING OFFICER. Is that all?

Mr. Manager PALMER. That is all.

Mr. HIGGINS. That will do, Mr. Blount.

F. W. MARSH, recalled.

Reexamined by Mr. HIGGINS:

Q. Mr. Marsh, in answer to a question from the Senator from Texas—

Mr. CULBERSON. On what page?

Mr. HIGGINS. Page 428. [To the witness.] You state, "The only information I could give would be conversations with Judge Swayne," in his endeavors to get a house in Pensacola. I did not examine you at that time on that branch of the case. I wish you now to state what endeavors to get a house in Pensacola were made by Judge Swayne, within your knowledge?

A. In the late fall or winter of 1896 Judge Swayne requested me to help him in obtaining a suitable residence in Pensacola for rent. Without going into details at all, during that year—the winter of 1896–97, and up to the spring of 1898—I made a great many endeavors to get a suitable house for rent in Pensacola for Judge Swayne. As I recall, in 1897 Judge Swayne drew a plat of such a house as he wanted and requested me to see if I could procure some one to build such a house in Pensacola. I submitted these plans to several parties,

but was unable to get anyone to build such a house or a house anything like it. In the spring of 1898 Judge Swayne requested me to cease my efforts, as his family was going to Europe. At his request, in the winter or late fall of 1899 I took up the quest again, and not until September, 1900, secured such a house as he had been looking for on satisfactory terms.

Q. What was that house?—A. That was the Simmons cottage.

Q. Did he occupy that cottage?—A. Yes, sir; he moved into that cottage October 1, 1900.

Q. How long did he remain there?—A. He remained all of that winter, with the exception of December, when he went to Tyler, Tex., by himself—he left his family in Pensacola—and late into the spring and early summer.

Q. After he left the Simmons cottage where, if any place, did he reside?—A. He moved from the Simmons cottage into the Blount property that he purchased from Mr. A. C. Blount, jr.

Q. Who owns that property now?—A. Judge Swayne.

Q. Is that his residence now?—A. Yes, sir; his furniture and property are there.

Q. Do you know of any visits, during the time of which you have spoken, from 1896, of his family to him at Pensacola?—A. Frequently. His wife was there with him, I think, on four or five occasions that I recall; and on two occasions his eldest son, Henry G. Swayne, and, I think, on two other occasions, his youngest son; and on one or two occasions his daughter. Sometimes they would come at the same time—two or three of them—and sometimes separately.

Q. How long did Mrs. Swayne remain there, within your knowledge, at any of those visits?—A. I think during the time the Judge was there himself.

Q. Do you know where they stayed?—A. Well, at the early part of the time of which I speak they boarded with Captain Northrup, and on one or two occasions I think Mrs. Swayne, and possibly one of the sons, came when he was staying at the Escambia Hotel.

Mr. HIGGINS. Cross-examine.

Cross-examined by Mr. Manager PERKINS:

Q. What years do you remember seeing Mrs. Swayne at Pensacola?—A. I think she was there in 1897, once or twice. She was there twice in 1899.

Q. Where was Judge Swayne staying in 1897?—A. In 1897—I think at that time his boarding place was the Escambia Hotel.

Q. And where was he staying in 1899?—A. In 1899—I think at the same place.

Q. Are you confident that Mrs. Swayne stopped at the Escambia Hotel four times in those two years?—A. No; I am not.

Q. You are not confident?—A. At one time that she was there she visited with my family.

Q. When was that?—A. I think that was in 1899.

Q. How many days did she stay with your family?—A. Not more than a week.

Q. Was Judge Swayne at that time staying with your family?—A. No, sir.

Q. What sort of a house was it that no man in Pensacola was willing to build?—A. Well, it was not the objection to the kind of house, but

it was the objection to building any house that I met with in my proposition.

Q. What do you say?—A. I say it was not the objection to building the specific plans he submitted, but it was objection to building that character of house at all.

Q. Well, what character of a house?—A. It was a house with four rooms below and a kitchen in addition, and four rooms above. The downstairs on one side consisted of two large parlors, between 35 and 40 feet, and on the other side was a dining room and library.

Q. Well, you have contractors and builders in Pensacola, have you not?—A. Oh, yes, sir.

Q. Houses are built there?—A. Yes, sir.

Q. There were houses for sale during all these years?—A. Up to 1898 there was very little property in the market and very little building going on.

Q. What was the name of the cottage that Judge Swayne finally rented?—A. The Simmons cottage.

Q. Was not that cottage for rent from 1894 to 1900?—A. I do not think it was; no, sir.

Q. Did not the owner of it die some years ago?—A. The owner, Mrs. Simmons, is still living. She is the owner of it.

Q. And has she not rented it for some years?—A. She rented it, I think, first in 1897 or 1898.

Q. Then the house that Judge Swayne rented in 1900 could have been rented in 1897?—A. If one had known about it.

Q. If one had known about it. Tell me again why was it that no contractor would make a contract to build this sort of a house for Judge Swayne?—A. I did not say "contractor." Judge Swayne did not propose to build it himself. He told me he did not have the funds.

Q. He did not intend to build it himself?—A. No; he wanted some real estate owner to build the property and rent it to him.

Q. He was not willing to rent a house unless it was the sort of house which you have described?—A. In a general way.

Q. And no man in Pensacola was willing to build that sort of a house?—A. I do not say "no man."

Q. You did not find any man?—A. Of the people I approached there was no person who agreed to or would consider it.

Q. Did you make diligent inquiry in behalf of Judge Swayne?—A. I approached, I think, four or five parties.

Q. And none of them would build this sort of a house?—A. No, sir.

Q. And so the result was that Judge Swayne made no negotiations for any other sort of a house?—A. Not through me.

Q. He wanted this sort of a house or he wanted no house, was that it?—A. Well, I did conduct negotiations for several houses of different character, but—

Q. They did not suit the Judge, did they?—A. The Chipley house was very different, and the negotiations fell through on a different ground altogether.

Q. Well, Judge Swayne, when he came down in the fall of 1900, rented a house, did he?—A. Yes, sir.

Q. Will you say whether that house had the parlors and the rooms which had been stated in this plan which Judge Swayne demanded?—A. Almost; yes, sir.

Q. It was a one-story cottage, was it?—A. No, sir; it was a two-story house.

Q. And that house was there in 1893 for rent?—A. That is my recollection; somewhere about that time. Mrs. Simmons was occupying the house, as I recall, in 1896 and 1897, when it was rented. I did not keep track of it.

Q. What sort of a house was it that Judge Swayne bought in 1903?—A. Well, it was a two-story house. The upper story is not a full story, but there are two or three bedrooms on the upper floor.

Q. It was not the sort of a house that you found it impossible to get built in Pensacola, was it?—A. Not specifically. It was in a general way. The house that he finally bought was not specifically the character of house that he drew the plans for.

Q. Was there any house in Pensacola of the character that Judge Swayne said he wished to have?—A. Well, I can not tell you that.

Q. Do you know of any?—A. During that period?

Q. From 1894 to 1900.—A. I suppose there were. I think there were; yes, sir.

Q. Did you find any of those houses?—A. I was unable to negotiate any lease for them.

Q. Did you make any endeavor? If so, tell us what house you endeavored to buy.

Mr. SPOONER. I think, in common with one or two other Senators, we would be glad to have this witness permitted to conclude his replies.

Mr. Manager PERKINS. I have no desire to cut the witness off. I thought he had finished.

The WITNESS. I think the first house that I took up negotiations for was what is known as the "new Simmons house," on Gregory street. It is rather a large house. After looking it over, I found that it was badly out of repair and in a very low part of the town; the water settled around the grounds, and I gave that up without even communicating with Judge Swayne. The second house, as I recall, was one owned by Mr. Sullivan, but that was rented before I had an opportunity to communicate with Judge Swayne. The next was the property of Mr. George W. Wright. I communicated with Mr. Wright, but he told me that he intended moving into town himself and occupying the house; so that I could not get it.

I conducted negotiations also for the house known as the "Chipley house," a very large house, but the agent wanted too much rent. He wanted \$600 a year. The party was to keep up the improvements, and it was a very expensive house, with three or four bathrooms. The Judge refused to pay that amount of rent or take a lease for five years, which was required. There were several other propositions that I proposed, but which I could not conclude.

Q. Have you finished?—A. One of them was the Piaggio house.

Q. Have you now finished the answer?—A. Well, yes, sir; practically.

Q. When was it that you first made any inquiry?—A. As near as I can recall, it was in the winter of 1896.

Q. When was it that you last made any inquiry?—A. Terminating in the consummation of the lease of the Simmons property, with the interval—there was an interval in which I was not looking for property at all; that was the year—

Q. How long was that interval?—A. From the spring of 1898 until the winter of 1899.

Q. That was a little less than two years?—A. Well, a year and a half.

Q. About a year and a half. Prior to the fall of 1900 you found no house which Judge Swayne was willing to buy or lease?—A. No, sir; I found no house on which—

Q. Do you remember any place in Pensacola at which either Mrs. Swayne or any of the children stopped prior to 1900, except at the Escambia Hotel?—A. From 1896?

Q. From 1894.—A. I have some recollection of their stopping at Captain Northrup's, but it is not distinct.

Q. How often did he stop at Captain Northrup's—have you any recollection?—A. Whenever terms of court were held or whenever he was in the city.

Q. How often did Mrs. Swayne stop there?—A. Well, from 1896 I only recall once or twice, in my recollection, when she stopped there, but I am not certain about that as a detail.

Q. You were examined before the committee of the House of Representatives?—A. Yes, sir.

Q. And at that time you testified, did you not, as follows:

Q. You say during the period of eight years Judge Swayne was in Pensacola and Tallahassee, ready for business, four hundred and ninety days?

And in answer to that did you say:

A. No; I said the minutes show that the court was open, Judge Swayne present, four hundred and ninety days in the period of eight years.

Was that your answer?—A. Yes, sir; I stated that.

Q. And that was a fact?—A. In explanation of that I will say that when I prepared the data on which I made that statement I had gone hurriedly over the minutes and selected from them the dates on which the court appeared to be open. I have since gone carefully over those minutes, and I think there is quite a number—probably fifteen, eighteen, or twenty days—which I overlooked in my first statement, which I was able to verify on my second, as days on which court had been open and Judge Swayne present.

Q. You have that statement here?—A. I have that certificate that I submitted to the managers when I first came here.

Mr. Manager PERKINS. That is all.

Reexamined by Mr. HIGGINS:

Q. You stated, in answer to the learned manager, that between some time in 1898 and some time in 1899, a period of about one and a half years, you did not make any search for a house?—A. Yes, sir.

Q. Why did you fix that period?—A. That period was the time that Mrs. Swayne and the Judge's family were in Europe—

Q. That was that time?—A. That is, the daughter and the youngest son.

Q. 1898 and 1899?—A. Yes; from the summer of 1898 until the summer of 1899.

Q. Do you know by correspondence where the judge was when he was not in Pensacola at that time?—A. Yes, sir; I kept in constant correspondence with him.

Q. Where was he?—A. During the period beginning usually in September—not usually, but often in September—usually in October

and reaching into June and sometimes to July, he was almost constantly holding court, either at Pensacola or Tallahassee, or in Texas, Louisiana, or Alabama.

Mr. HIGGINS. That is all.

Reexamined by Mr. Manager PERKINS.

Q. You have here the records which show what courts Judge Swayne attended, have you not?—A. I submitted the certificate as to the courts in the northern district of Florida.

Q. And you understand the records of the other courts are here?—A. Yes, sir; they were before the Judiciary Committee.

Mr. QUARLES. I should like to propound two questions.

The PRESIDING OFFICER. The Senator from Wisconsin propounds two questions, which will be read.

The Secretary read the first question of Mr. QUARLES, as follows:

Q. When did Judge Swayne move into the Blount property?

A. In October, 1903.

The Secretary read the second question of Mr. QUARLES, as follows:

Q. Has he continued to live there ever since?

A. Yes, sir.

The PRESIDING OFFICER. Are there further questions of this witness?

Mr. MALLORY. Mr. President, I have a question I should like to propound.

The PRESIDING OFFICER. The Senator from Florida propounds a question which will be read by the Secretary.

The Secretary read as follows:

Q. Will you please state whether or not Judge Swayne could, with any reasonable effort, between 1894 and 1903, have secured a residence equally as good in character of construction, size, and location as that which he purchased of A. C. Blount, jr.?

A. I can only testify as to my own experience in negotiations. I think possibly such a residence could have been procured, but I was unable to get a satisfactory lease. My connection with the matter was only at the request of Judge Swayne, and I kept in constant correspondence with him about it.

Q. (By Mr. Manager PERKINS.) Will you state how much of the time since Judge Swayne purchased the Blount house in October, 1903, has Judge Swayne been in Pensacola?

Mr. HIGGINS. I do not want, Mr. President, to interpose any unnecessary objection, but that seems to me to be quite beyond the time laid in the articles.

Mr. Manager PERKINS. That, perhaps, is in answer to the question put by one of the Senators, in response to which the witness said that since October, 1903, Judge Swayne had lived in the Blount house.

The WITNESS. I should like to amend my answer in that respect. It has just occurred to me.

Mr. Manager PERKINS. Very well.

The WITNESS. That in the fall of 1904 Judge Swayne did not return to this residence; that I know of my own knowledge that he has been under treatment in a Philadelphia hospital, and under the doctors almost continually since.

Q. When did he last leave Pensacola?—A. He left Pensacola, I think, some time in July, 1904.

Q. And has not been there since?—A. No, sir.

Mr. HIGGINS. Now, Mr. President, I could move to have that stricken out because it puts us to the necessity of evidence in reply; but it is all about a period that has not been brought up, and it has been since Judge Swayne has been under the advice of his present counsel here, and I think we might be exempted by our learned opponents from any such imputation.

Mr. Manager PERKINS. If it is immaterial, it does no harm.

The PRESIDING OFFICER. What is the particular answer which counsel desires to have stricken out?

Mr. HIGGINS. I will withdraw the request that it be stricken out.

Mr. BACON. Mr. President, there are several questions on one page which I desire to propound to the witness, and I ask that they be read in order.

The PRESIDING OFFICER. The Secretary will read as requested.

The Secretary read the first question of Mr. Bacon as follows:

Q. How long after pronouncing sentence upon Belden and Davis was it before you gave the commitment to the marshal? State the time approximately, as nearly as you can.

A. I should judge about fifteen to twenty minutes.

The Secretary read the second question propounded by Mr. Bacon, as follows:

Q. Did anyone assist you in preparing the two commitments or tell you what to embrace therein? When were they prepared and written?

A. I prepared the two commitments as one document on the type-writer myself. All I had to do was to change or to leave out the name and insert it afterwards separately.

The Secretary read the third question propounded by Mr. Bacon, as follows:

Q. Was it either in whole or in part before the contempt trial?

A. Not in the least; I had not the slightest suggestion as to what the result of that trial would be.

The Secretary read the fourth question propounded by Mr. Bacon, as follows:

Q. The commitment of Davis is on page 242—

Mr. BACON. I am not sure that the witness's answer has covered the full inquiry, and I ask that the question be read over again.

The Secretary read the question, as follows:

Q. Did anyone assist you in preparing the two commitments or tell you what to embrace therein?

A. No, sir.

Mr. BACON. That is not the one. I want the other question read.

The Secretary read the question propounded by Mr. Bacon, as follows:

Q. When were they prepared and written? Was it either in whole or in part before the contempt trial?

A. I should like to answer that question seriatim.

Mr. BACON. Certainly.

The Secretary again read the question, as follows:

Q. Did anyone assist you in preparing the two commitments or tell you what to embrace therein?

Mr. BACON. Mr. President, the question really involves several inquiries, and the witness very naturally desires that he may answer them seriatim. I therefore ask that the Secretary may read each part of the question alone, and let the witness answer.

The Secretary read as follows:

Q. Did anyone assist you in preparing that commitment?

Mr. BACON. The Secretary does not read the entire question. He is reading part of it.

The PRESIDING OFFICER. The Secretary is reading from the beginning of the question.

Mr. BACON. I beg pardon. I am speaking from memory. There are several parts of it there.

The Secretary read as follows:

Q. Did anyone assist you in preparing the two commitments?

A. No, sir.

The Secretary read as follows:

Or tell you what to embrace therein?

A. No, sir.

The Secretary read as follows:

When were they prepared and written?

A. Immediately after the conclusion of the trial.

The Secretary read as follows:

Was it either in whole or in part before the contempt trial?

A. Not at all; no portion of it was prepared or thought of before the trial.

The Secretary read the next question propounded by Mr. Bacon, as follows:

Q. The commitment of Davis is on page 242 and the commitment of Belden is on page 248, which is more than a page of fine print. Please state how long it took you to prepare and write them.

A. I stated that from twenty minutes possibly to half an hour, because I am a very rapid typewriter myself.

Mr. BACON. Mr. President, it is the desire of Senators around me that the witness be requested to read that commitment at the present time. It is on the record. There are two of the commitments. If it is necessary, I will put my request in writing; but I address it to the Chair, not to the witness, in order that the Chair may give such directions as are proper.

The PRESIDING OFFICER. Is there a request that the witness read it?

Mr. BACON. It is the request of Senators around me. I am content that it be read by the Secretary. I want it read in connection with this testimony.

The PRESIDING OFFICER. If there be no objection, the witness will read.

Mr. BACON. I am perfectly content that the Secretary shall read it, Mr. President. I am only yielding to the suggestion of others.

The PRESIDING OFFICER. If there be no objection, the witness will read the commitment on page 242.

The witness read as follows:

United States of America, circuit court of the United States, fifth circuit, northern district of Florida.

The President of the United States to the marshal of the United States for the northern district of Florida, greeting:

Whereas at a session of the circuit court of the United States for the fifth circuit and northern district of Florida, held at the city of Pensacola, in said circuit and district, on the 11th day of November, A. D. 1901, a rule to show cause why he should not be punished for contempt of the said court was duly made and entered by the said court against Ezra T. Davis for causing and procuring, as attorney of the circuit court of Escambia County, Fla., a summons in ejectment, wherein Florida McGuire was plaintiff and the Hon. Charles Swayne was defendant, to be issued from the said court and served upon the said judge of this court, to recover the possession of block 91, Cheveaux tract, in the city of Pensacola, Fla., a tract of land involving a controversy in ejectment then pending in the said circuit court of the United States in a case wherein the said Florida McGuire was plaintiff and the Pensacola City Company and others were defendants, upon the grounds:

1. That the said suit in ejectment against the judge of this court was instituted after a petition to this judge to recuse himself in the case of Florida McGuire v. The Pensacola City Company and others had been submitted to the court on November 5, 1901, and denied, and after the said judge had said in open court and in the presence of the said ——— that the allegation of the said petition that he or some member of his family were interested in or owned property in said tract was untrue, and had stated that he had refused to permit a member of his family to buy land in said tract, because the said suit by Florida McGuire involving the title to the said tract, was in litigation before him, the said judge.

2. That after the said declaration of the said judge the said counsel were aware that neither the said judge nor any member of his family were the owners of or interested in any part whatever of the said tract, and had no reason to believe that he or they were so interested, and knew or could easily have known that the said block was not in the possession or control of anyone, but was entirely unoccupied.

3. That the said suit was instituted against the said judge on Saturday night, the 9th instant, after 6 o'clock, and after the court had overruled the motion of said attorneys to postpone the trial of the said cause of Florida McGuire v. Pensacola City Company and others for a week or more, and after the said judge had announced to the counsel aforesaid that he would call the case for trial on Monday, November 11, 1901, and would then try the case, unless counsel for plaintiff made a showing why he should not so try, and the said counsel had announced that they would make such showing.

4. That the said E. T. Davis was, before the institution of the said suit against the said judge, cognizant of all the facts herein set forth.

Which charges were in violation of the dignity and good order of the said court and a contempt thereof.

And afterwards, to wit, on the 12th day of November, A. D. 1901, the said defendant having been duly served with an order to show cause why he should not be punished for the alleged contempt aforesaid, which order was returnable at said time, was duly tried by the court upon his answer and the evidence of witnesses on the charges aforesaid in the said rule preferred, and a verdict of guilty was duly rendered by the said court against the said defendant, Elza T. Davis.

And afterwards, on the same day, our said court, by reason of the verdict aforesaid of the said court, did duly sentence the said Ezra T. Davis to be imprisoned in the county jail of Escambia County, in the State of Florida, for and during the term and period of ten days from the 12th day of November, A. D. 1901, and further to pay a fine or penalty to the United States Government of \$100, and that he stand committed until the terms of said sentence be complied with, or until he be discharged by due course of law.

The said jail being the place duly selected for the imprisonment of persons convicted of offenses against the laws of the United States in the courts thereof in said northern district of Florida.

Now, therefore, you, the said marshal, are hereby commanded to convey to the said jail at Pensacola, in the State of Florida, the body of the said Ezra T. Davis, and deliver him to the keeper thereof.

And you, the said keeper, in the name of the President of the United States of America, are hereby commanded to receive the body of the said Ezra T. Davis, the person aforesaid, into your custody, and him, the said Ezra T. Davis, keep in the said jail of Escambia County, in the State of Florida, at Pensacola, for the full term and

period of ten days, from the 12th day of November, 1901, and until the said fine of \$100 be paid, or until he be discharged by due course of law.

Herein fail not at your peril. And make due return of what you shall do in the premises and of this writ.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the seal of this court, at the city of Pensacola, in said district, this 12th day of November, A. D. 1901.

[SEAL.]

F. W. MARSH, Clerk.

Mr. PATTERSON. Mr. President, I desire to propound a question to the witness.

Mr. BACON. Mr. President, I will not ask that the witness read the other commitment, which is identical with the one he has read.

Mr. SPOONER. Mr. President, if the Senator from Colorado [Mr. Patterson] will permit me a moment, I understood the witness to testify that he prepared these commitments on the typewriter, at the same time leaving a blank in the names and filling in after the names.

The PRESIDING OFFICER. The Presiding Officer so understood. The reporter can read the answer.

The WITNESS. I think I had blank forms of that particular form, and I think I used it in this case. I am not certain, though, about that.

Mr. SPOONER. I wanted to verify the accuracy of my hearing, that is all. I should like the stenographer to read that portion of the answer of the witness before the questions were put to him a second time.

The PRESIDING OFFICER. The reporter will read the answer in which the witness stated how long it took him to prepare the commitments.

Mr. BACON. I recall the fact now, and it is not necessary to have the reporter read. The witness said he prepared the commitments, leaving blanks, and inserting the names afterwards.

The PRESIDING OFFICER. Does the Senator from Wisconsin wish the answer read?

Mr. SPOONER. I do not.

Mr. PATTERSON. I have some questions to propound.

The Secretary read as follows:

Q. Had you ever prepared a commitment for contempt before?

A. No, sir.

The Secretary read as follows:

Q. Did you have any printed form from which to prepare the commitment?

A. I had a printed form which followed the language used in this—I am not certain whether I used it or not—all excepting the charging clause. That is a blank space which I always fill in.

Mr. TALIAFERRO. I should like to propound a question to the witness.

The PRESIDING OFFICER. The Senator from Florida propounds a question, which will be read.

The Secretary read as follows:

Q. Do you hold any other positions on the appointment of Judge Swayne besides clerk of the district court? If so, state what they are and how long you have held them.

A. I am United States commissioner at Pensacola now. The position became vacant last summer, and I was appointed with the consent of the Attorney-General, which is the requirement of the law.

The PRESIDING OFFICER. Is there anything further desired of this witness?

Mr. HIGGINS. I have one or two questions only. [To the witness.] You said you used a printed form. I will ask you whether or not it is such printed form as is used in the ordinary case of the commitment of a person convicted of a crime?

A. Yes, sir; wherever there is a jail sentence.

Q. Is it a form that is sent you by the Department of Justice among its printed matter or is it one that you have prepared yourself out of some form book?—A. It is a copy of the form used by the clerk in New Orleans. That is where I got it from. The Department does not furnish such forms.

Reexamined by Mr. Manager OLMSTED:

Q. You have testified that in making out this commitment you used a printed form?—A. I am not certain about that; no, sir.

Q. Will you kindly look at page 242 and tell me what part of the commitment is contained in any printed form that you ever saw before you made this out?—A. The first three or four lines follow in a general way the form with the exception that in the regular form there is a space left for the presentment—

Q. Just read the part that is in the regular form.—A. The venue and then the direction:

The President of the United States to the marshal of the United States for the northern district of Florida, greeting.

That is part of the regular form; and—

Whereas at a session of the circuit court of the United States for the fifth circuit and northern district of Florida, held at the city of Pensacola, in said circuit and district, on the — day of —, A. D. —.

Down to there.

Q. That is the end of the printed form?—A. Then beginning after the paragraph marked "4."

And afterwards, to wit, on the — day of —, A. D. —, the said defendant—

Then blank.

Mr. Manager OLMSTED. Hold on. I do not find that.

Mr. HIGGINS. It is on page 243, about one-third way down.

A. In the form there are blank spaces left to fill in to cover the case.

Q. (By Mr. Manager OLMSTED.) All this long matter commencing on page 242, after the figures "1901," you composed yourself?—A. Yes, sir.

Q. Did you sit right down at the typewriter, without writing it out on paper, and then play it off on the machine as you would a piano?—A. No, sir; I had the rule. This is a copy of the rule, or almost a copy of the rule. I took it verbatim from the rule.

Q. Who helped you in preparing that commitment?—A. No one.

Q. Who wrote out any part of it?—A. No one, except myself.

Q. Who told you to prepare it?—A. No one.

Q. How did you happen to prepare it?—A. I always prepare commitments when prisoners are sentenced, as a matter of course, without any specific direction. That is part of my duty, as I understand it.

Mr. Manager OLMSTED. That is all.

By Mr. HIGGINS:

Q. Looking at page 243, I will ask whether or not in the printed blank there is included the part which begins—

Now, therefore, you, the said marshal, are hereby commanded to convey.

A. All of that following the charging part, the figure "4" in that paragraph excluded, beginning with the next paragraph, follows the form, I think. I will state that I am not sure that I filled this particular commitment on a form, but I did have before me the form and followed the form in the phraseology.

Mr. HIGGINS. That will do.

Mr. MALLORY. I could not catch the answer of the witness, and rather than go to the trouble of having it read I will submit another question.

The PRESIDING OFFICER. The Senator from Florida propounds a question, which will be read:

The Secretary read as follows:

Q. Are you not court commissioner of the circuit court under Judge Swayne?

A. There is no such office now. It was abolished some years ago. The position is that of United States commissioner, and the appointment is made by the district judge. In cases where the clerk is appointed it must be done with the consent of the Attorney-General, and that method was followed in my appointment last summer—I think it was.

The Secretary read as follows:

Q. What are the duties of such commissioner?

A. A committing magistrate in criminal charges only.

The PRESIDING OFFICER. Is there anything further wanted of this witness? If not, he will be excused. Are there further witnesses on the part of the respondent?

Mr. HIGGINS. Just one, Mr. President. Call Mr. Henry G. Swayne.

HENRY G. SWAYNE, sworn and examined.

By Mr. HIGGINS:

Q. Where is your residence?—A. Philadelphia, at the present time.

Q. What is your occupation?—A. Attorney at law.

Q. How long have you been a member of the bar?—A. Since the fall of 1898.

Q. Do you recall the time of the passage of the act of Congress curtailing the northern district of Florida?—A. Yes, sir.

Q. July, 1894? Where were your father and family residing at that time?—A. St. Augustine, Fla.

Q. You were not there that year?—A. I was there at that time; that summer.

Q. State what you know as to any facts or acts of Judge Swayne with reference to making his residence at Pensacola.

Mr. Manager PERKINS. We must object to the form of the question. I do not object to counsel asking him what he did, or to asking something specific.

Mr. HIGGINS. I do not want to lead the witness. I am asking in the widest way.

Mr. Manager PERKINS. It is so wide that heaven knows what the witness will answer, whether his answer will be relevant or irrelevant.

Mr. HIGGINS. I will limit it as to making a residence at Pensacola, or making a residence anywhere.

A. Immediately after the passage of the act, or within a few days thereafter, he left the home in St. Augustine and went to Pensacola, declaring that he was—

Mr. Manager PERKINS. That comes from not asking questions.

Mr. HIGGINS. He did not state what the declaration was.

Mr. Manager PERKINS. I do not object to his stating what Judge Swayne did.

Mr. HIGGINS. I offer to prove by this witness what the judge declared at the time; and I should like to know if the manager objects.

Mr. Manager PERKINS. We object. That is easily answered.

Mr. HIGGINS. The sense of the Senate has been taken on that question this morning, and I suppose we can not go into it.

The PRESIDING OFFICER. The Presiding Officer understands that counsel propose to prove the declaration of Judge Swayne made at the time when he left his home in St. Augustine as to where he was going to make his home.

Mr. HIGGINS. Yes, sir; that is the offer.

Mr. Manager PERKINS. And it is objected to. It is the same question we had up this morning.

The PRESIDING OFFICER. The Presiding Officer thinks that may be done. If any Senator desires, he will submit the question to the Senate.

Mr. Manager PERKINS. I suggest that as I understood the ruling this morning on a similar question asked a gentleman from Philadelphia as to what Judge Swayne had stated in reference to his intention—

The PRESIDING OFFICER. This is a declaration made at the time he left his home in St. Augustine as to where he intended to take up his home on leaving the St. Augustine home.

Mr. Manager PERKINS. But it is his own declaration. It is proving his intention by his own declaration, repeated by another witness. I think it is exactly the point that was made this morning.

The PRESIDING OFFICER. If any Senator desires, the Presiding Officer will submit the question to the Senate. [A pause.] The Presiding Officer thinks it part of the *res gestæ*.

Mr. HIGGINS (to the reporter). Please read the question to the witness.

The reporter read as follows:

Q. State what you know as to any facts or acts of Judge Swayne with reference to making his residence at Pensacola.

Mr. Manager PERKINS. I dislike to be technical, but the question is in such form that I can not anticipate what is to come. Do I understand that the witness went with Judge Swayne to Pensacola?

Mr. HIGGINS. The witness is now undertaking, under the decision of the President of the Senate, to state what Judge Swayne declared when he left St. Augustine.

Mr. Manager PERKINS. Not at all.

The WITNESS. That is it.

Mr. Manager PERKINS. He is undertaking to say that Judge Swayne went to Pensacola—

The PRESIDING OFFICER. Will the reporter read the question again?

The reporter read as follows:

Q. State what you know as to any facts or acts of Judge Swaye with reference to making his residence at Pensacola.

The PRESIDING OFFICER. Change the form of the question so as to read "with reference to changing his residence from St. Augustine."

Q. (By Mr. HIGGINS.) With reference to changing his residence from St. Augustine.

Mr. Manager PERKINS. Do I understand the President to rule that the witness may state that Judge Swayne went to Pensacola because he told him he went there? It would be hearsay evidence.

The PRESIDING OFFICER. The Presiding Officer understands that the witness is about to testify to a statement made by Judge Swayne at the time he was giving up his home in St. Augustine; and that, the Presiding Officer thinks, the witness may state.

Mr. HIGGINS. Please proceed.

A. The statement in full which was made by Judge Swayne at the time, as I recollect it, was that the bill dividing the district or redistricting the State, whichever it was, had just passed Congress and been signed by the President, and that he would be compelled to make his residence within the boundaries of his district, and that he was going to go to Pensacola; and with that declaration he left St. Augustine that summer in the month of July. I was there, having gone down after my collegiate year was over, from Philadelphia, and I, with the other members of the family—

Mr. Manager PERKINS. Do you seek to—

A. Went north at a later date, Judge Swayne coming from Pensacola for his summer vacation.

Q. (By Mr. HIGGINS.) You then, I understand, went north with the rest of the family. Did that include your mother?—A. My mother, my sister, and my brother.

Q. Where did you go?—A. We went to Guyencourt, Del.

Q. That is the residence of your grandmother?—A. Of my grandmother.

Q. Did I understand you to say that Judge Swayne came there from Pensacola?—A. Within a week or ten days; yes, sir.

Q. Mr. Swayne, of course you are familiar with all the movements of your father's family?—A. I am. I was in correspondence continually ever since I left home in 1891 to go to college. I have refreshed my memory from old letters which I have in my possession.

Q. Did you or not have an intimate and familiar family knowledge of the whereabouts all the time of your mother and father and brother and sister?—A. Continuously; yes, sir.

Q. Will you please state how long your mother, brother, and sister remained as residents at St. Augustine?

Mr. Manager PERKINS. I object to the form of the question, because it asks him how long they were residents. Ask how long they remained.

Mr. HIGGINS. Very well. [To the witness.] How long did they remain there?—A. During the winter time and fall and spring of the year they spent their time in St. Augustine, with the exception of certain visits made elsewhere, until the summer of 1896.

Q. (By Mr. HIGGINS.) Until the summer of 1896?—A. Yes, sir.

Q. Did they continue their occupancy of any residence, any house there, after that?—A. Not after that.

Q. That terminated it?—A. That terminated their occupancy of any residence in St. Augustine or any house there.

Q. Where did they stay, live, abide after that, up to the time it has been testified here that they went to Europe?—A. Up to the summer of 1898. The winter of 1896 and 1897 they were part of the time in New Orleans, part of the time in Chester County, Pa., visiting some relatives, part of the time, in the fall of the year, at Guyencourt, Del., and part of the time in Philadelphia, Pa. I think they were also in New York that same year; in the spring of the year. That brings them to the summer of 1897?

Q. Yes.—A. The summer of 1897 was spent as usual, a portion of it at Guyencourt, and in the fall of 1897 they went South. I believe and understand, especially, I mean from letters received from them. I learned they were in New Orleans. They were there at the time of the Mardi Gras, and spent most of the winter there. In the early summer of 1898 they came North.

Q. I will interrupt you at this point to ask whether or not at the time they were at New Orleans Judge Swayne was holding court there?—A. It was; yes, sir. He was sitting on the circuit court of appeals in New Orleans nearly all of one winter, I believe, and he was also holding circuit or district court there at another time. Whether it was that same winter or not I do not know.

Q. Now, go on with your statement after that as to where the family were.—A. In the summer of 1898 I graduated from the law school of the University of Pennsylvania, in June, about the 9th of June, I believe. They arrived in Philadelphia from the South a day or two before that, and attended the graduation exercises. In July of that year the whole family, including Judge Swayne and myself, sailed for Europe, and after traveling around for a considerable extent Judge Swayne and I left my mother and brother and sister in Dresden, Germany, and on the 1st of September started our journey homeward, reaching New York the latter part of September. Judge Swayne came with me to Philadelphia. I think he visited Guyencourt for a day or two, and then went to Florida.

He was at various times that year, previous thereto and subsequent thereto, after beginning, I think, with the fall of 1895, holding court at Waco, Dallas, Tyler, New Orleans, Birmingham, Huntsville, in the States of Louisiana, Texas, and Alabama. He went to Florida shortly, within a few days, after our return from Europe, and was there and at other places holding court, which information I may say I gather from my correspondence, until the summer of 1899. He came north in June, 1899, for his usual summer vacation, and he and I met the other members of our family—mother, brother, and sister—in Philadelphia in July of that year.

Q. On their return from Europe?—A. On their return from Europe. As nearly as I can recollect, the major portion of that summer was spent at Guyencourt, Del., until September. In that month—it may have been the early part of October—Judge Swayne went to Huntsville, Ala., to hold court and returned to Philadelphia on the 4th or 5th of November of that year, 1899, to attend my wedding, which took place upon the 9th of November.

Upon the 10th of November my wife and I started for Cuba and Judge Swayne accompanied us as far as Jacksonville, leaving us there, taking the train. I saw him get on the train which runs to Pensacola.

Subsequently in Cuba I received letters from him at Pensacola during that winter. In the spring of 1900, or early summer of 1900, I returned from Cuba, and my wife and I took up our residence temporarily at Guyencourt. Judge Swayne visited there that summer, as he had done previously, and also members of the family.

I believe I neglected to state where the members of the family were after they came back from Europe.

Mr. HIGGINS. I was going to ask you that question.

A. They came back in July, 1899, and at the time of my marriage I was living in a house in Wilmington, on Market street, No. 1223, and

my mother and brother and sister occupied that house during a portion of that winter. A portion of the winter they spent, I believe, in New Orleans, at the time of the Mardi Gras. Also, if my recollection serves me, my mother visited Judge Swayne in Texas, at Dallas and at Tyler, in 1897, the winter of 1897, for a while. I know I visited Judge Swayne there in the summer of 1896.

Q. (By Mr. HIGGINS.) Where?—A. Dallas, Tex. He was holding court at that point at the time. It was my custom, when college was over, to go South for possibly a month. I also went South frequently at Christmas time, just for the holidays.

Q. Did you visit him after 1896—I will confine your attention in the first instance to the ensuing year—at any place?—A. I visited him at Pensacola.

Q. At what time?—A. In the summer time, in the month of June.

Q. What year?—A. If my recollection serves me, it was 1895.

Q. I am asking after 1896. You visited him there, you say, in 1895?—A. I visited him there after 1896; in the spring of 1899.

Q. Were you there in 1896 at all?—A. I was in Pensacola in 1896; yes, sir.

Q. For how long?—A. For a few days.

Q. Where did you stay?—A. I stayed at Mrs. Northrup's.

Q. Where was Judge Swayne staying?—A. At Mrs. Northrup's.

Q. Was any one of your family besides yourself there?—A. Not at that time.

Q. At any time?—A. In April of that year my sister visited him, and I fortunately ran across the letter in which he announced that fact when writing to me.

Q. What is the date of that letter?—A. The fourth month, the 17th day; Pensacola, Fla.

Mr. Manager PERKINS. You do not offer the letter?

Mr. HIGGINS. It contains other matters.

Mr. Manager PERKINS. You do not offer the letter in evidence?

Mr. HIGGINS. To refresh the witness's recollection.

Mr. Manager PERKINS. He has given that.

The WITNESS. In that letter—

The PRESIDING OFFICER. The Presiding Officer does not think the letter of the witness's sister—

The WITNESS. It is the letter of Judge Swayne to me, from Pensacola.

Q. (By Mr. HIGGINS.) Refreshing your recollection by that letter, will you state whether or not she was visiting him at that time?—A. She was visiting him at that time, at Captain Northrup's house. I may state further that when I was visiting there—I think it was in 1896—either Mrs. Northrup or her husband said to me—

Mr. Manager PERKINS. You do not offer that? You do not seek to give—

The PRESIDING OFFICER. What Mr. Northrup said can hardly be evidence.

Mr. HIGGINS. Only to this extent: He was particularly interrogated, and so was Mrs. Northrup, as to whether or not any room in his house was called Judge Swayne's room. They said it was not. That is subject to be otherwise proved.

Mr. Manager PERKINS. Then you must lay a foundation to contradict. My friend knows if he is going to contradict a witness he must call the witness' attention to the point, and that he did not do.

Mr. HIGGINS. No; I did not.

Mr. Manager PERKINS. He certainly did not.

Mr. HIGGINS. That is true. [To the witness.] You may omit any statement of that, Mr. Swayne. Now, in the year 1897, before you went to Europe, were you or not visiting Judge Swayne in Florida; and if so, where?

The WITNESS. You mean in 1898?

Mr. HIGGINS. No; you went to Europe in 1899.

The WITNESS. We went to Europe in 1898.

Mr. HIGGINS. I mean in 1897.

The WITNESS. In 1897?

Mr. HIGGINS. Yes, sir.

A. I visited him in 1897, at Pensacola, at Christmas time, for a week or ten days.

Q. Where was he staying then?—A. If my recollection serves me, he was staying at the Escambia Hotel.

Q. Were any other members of the family there with you?—A. That I can not say.

Q. Do you know of your mother or sister or younger brother being there during the times you have spoken of?—A. Once; yes, sir.

Q. When?—A. That I can not place. I have nothing to refresh my recollection as to which time it was.

Q. Do you know of any of them visiting him while he was holding court at New Orleans or in Texas or Alabama?—A. I do.

Q. State what.—A. My mother and my sister at different times had visited him when holding court at other points, and I have already stated that in the winter of 1897 and 1898 they visited him in New Orleans, or were with him in New Orleans, nearly all the winter.

I will correct a statement just made. I said I spent Christmas with him in Pensacola in 1897. It was not at Christmas time. If my recollection serves me right, it was Thanksgiving. I am not positive about that. I may be mistaken. I may be mistaken as to the particular year.

Q. You were speaking of a time when, as I understood it, the family were staying in Wilmington and you were not there yourself. For what reason were you not there?—A. I was away on my wedding trip. I went to Cuba in November, 1899, on my wedding trip, starting the 10th of November.

Q. Were you delayed there for any cause?—A. My wife and I had yellow fever and were hauled off to the hospital, and we were advised when we were through with the yellow fever that it would be dangerous to return to a cold climate, for fear of taking pneumonia. So we stayed in Cuba until the weather got warm in this part of the country.

Q. What year was that?—A. It was in 1899 and the spring of 1900.

Q. Where were your mother and sister during that year?—A. The greater portion of the winter, I believe, they spent—I know they spent—at my house in Wilmington. My brother was at his first year in college that year.

Q. What college?—A. The University of Pennsylvania, Philadelphia.

Q. Did you graduate there?—A. In the academic department in 1895 and the law department in 1898.

Q. Will you state whether or not at any time during this period your brother was stricken with disease?—A. Yes, sir.

Q. When, and what?—A. First he had an attack of blood poisoning, followed by nervous prostration, and he was seriously ill for a considerable time.

Q. At what time of the year was it?—A. That was just before what was called the February examination.

Q. In what year?—A. I will not be sure what year. I think it was 1901.

Q. Do you know what year your father and family went into the occupation of the Simmons house?—A. I will have to think a minute.

Q. If you cannot say directly—A. I can not say definitely what year.

The PRESIDING OFFICER. Is there any question about that?

Mr. Manager PALMER. No, sir.

The WITNESS. I know I visited there at various times after they did occupy the Simmons cottage.

Q. (By Mr. HIGGINS.) You did?—A. Yes, sir.

Q. Was anyone with you?—A. My wife was with me after 1899.

Q. That was the year of your marriage?—A. Yes, sir; that was the year of my marriage.

Q. Now, one other question only. Since July, 1904, please state whether or not your father, Judge Swayne, has or has not been under medical attendance.—A. Continuously; yes, sir.

Q. Where?—A. A part of the time at the University of Pennsylvania Hospital, in Philadelphia; a portion of the time at Milton Jackson's residence, in Philadelphia, where he was very ill, not expected to live, and continuously under the care of Dr. Edward Martin, a noted physician of Philadelphia, who had been treating him, to my knowledge, once or twice a week all of that time.

Q. Mr. Swayne, was he a part of that time at your house in Wilmington, before you moved to Philadelphia?—A. He was; yes, sir. He was there, and would go to Philadelphia for treatment regularly.

Q. In what month was he at the hospital in the year 1904, this last year?—A. I believe it was the month of September or October, for three weeks. Immediately following that he was confined to his bed at Milton Jackson's, he having left the hospital.

The PRESIDING OFFICER. The Presiding Officer does not see how this is important, as the witness has testified that the respondent had been continually under medical treatment since a certain date.

Q. (By Mr. HIGGINS.) I want to lay the ground for one other question, and that is whether or not, at the time just before his coming out of the hospital, his condition was not a critical one as to his surviving or not?

The WITNESS. Yes, sir; very critical.

Q. Since the renewal of the examination before the House Judiciary Committee in these impeachment proceedings and the preparation of this trial, was or was not Judge Swayne staying at your house?—A. He was; all the time.

Q. Until you moved to Philadelphia?—A. All the time before.

Q. And his presence has been there on that account?—A. Yes, sir.

Mr. HIGGINS (to Mr. Manager PERKINS). Cross-examine.

Cross-examined by Mr. Manager PERKINS:

Q. Only a question or two. I understood you to say that your mother and sister at certain times—A. My mother, sister, and brother.

Q. Very well. Your mother, sister, and brother at certain times visited Judge Swayne when he was holding court in Pensacola?—A. Yes, sir.

Q. And that they visited Judge Swayne when he was holding court at New Orleans?—A. Yes, sir.

Q. And at various other places?—A. Yes, sir.

Mr. Manager PERKINS. I guess that is all.

Reexamined by Mr. HIGGINS:

Q. Did you say while he was holding court at Pensacola?—A. At various times at Pensacola, I intended to state. Whether he was holding court there or not I did not know nor do I know. He may have been holding court, and court may not have been in session. I know that he was there. I know that times when I was visiting there sometimes he was not holding court. I know that he went on little excursion trips with me in the country, hunting, and on the bay, sailing, at times when court was not in session.

Mr. HIGGINS. That will do, sir.

Reexamined by Mr. Manager PERKINS:

Q. Were you ever there more than a week or ten days prior to 1900 at one time?—A. Prior to 1900?

Q. Yes.—A. Not that I recollect, sir.

Mr. Manager PERKINS. That is all.

Mr. THURSTON. I call Mr. McGourin on one point.

THOMAS F. MCGOURIN recalled.

By Mr. THURSTON:

Q. You have already testified that you are United States marshal and have been for some years?—A. Yes, sir.

Q. Does the Department of Justice send to you, as United States marshal, blanks upon which judges' certificates are to be made to secure their pay for travel and attendance?—A. When out of their district?

Q. When out of their district.—A. Yes, sir.

Q. (Handing paper to witness.) I will ask you if that is the form that the Department of Justice sends to you for that purpose?—A. (Examining.) That is the form.

Mr. THURSTON. We offer that in evidence.

Mr. Manager PALMER. We have no objection to that.

The PRESIDING OFFICER. It may be put in the record without reading.

The paper referred to is as follows:

UNITED STATES OF AMERICA, ——— district of ———, ss:

I, ———, district judge of the United States for the ——— district of ———, do hereby certify that I was directed to and held court at the city of ———, in the ——— district of ———, ——— days, commencing on the — day of ———, 189—; also that the time engaged in holding said court and in going to and returning from the same was ——— days, and that my reasonable expenses for travel and attendance amounted to the sum of ——— dollars and ——— cents, which sum is justly due me for such attendance and travel.

Received of ———, United States marshal for the ——— district of ———, the sum of ——— dollars and ——— cents, in full of the above account.
\$——.]

Mr. THURSTON. That is all.

Mr. HIGGINS. That is all, Mr. McGourin.

Mr. THURSTON. Mr. President, we are unable to agree as to what the certificates show as to the number of days that Judge Swayne held court in the various districts from time to time. I, therefore, am compelled to offer these certificates [producing papers] from the clerks of the various courts, and I would be more than willing to have the Secretary or some disinterested party make the computation from them and let that computation be put in the record instead of the certificates.

Mr. Manager PALMER. That is all right. I have no objection to that. The objection to the certificates is that they are duplicated; that is to say, the certificates of the circuit court clerk and the certificates of the district court clerk are for the same time, and they make up an aggregate of eight hundred odd days, when in point of fact they are less than that. I have gone over these certificates and made a record of what they contain, and I have no objection whatever to some disinterested party going over them and ascertaining the number of days that Judge Swayne held court out of his district, and the number of days he held court in the district as ascertained by the certificates. Of course you must count the same days in both the circuit and district court when they are one and the same.

The PRESIDING OFFICER. The Presiding Officer does not know who can make the computation or how it can be made except by counsel themselves or the managers.

Mr. Manager PALMER. So far as we are concerned, we will consent that the Presiding Officer shall appoint somebody who shall make the computation.

The PRESIDING OFFICER. The Presiding Officer has no such power.

Mr. Manager PERKINS. I suggest that it is unnecessary to print the certificates by which the judge authorized Judge Swayne to hold court. We raised no question about that. The certificates as to the amount of time employed are very short, and it will appear upon an examination how many days are duplicated.

Mr. THURSTON. On that statement of the honorable manager, then, I will ask that only so much of these statements as cover the days and dates when Judge Swayne was holding court be put in the record.

Mr. Manager PERKINS. Very well.

Mr. Manager PALMER. And not the certificates of the judges authorizing him to hold court.

Mr. Manager PERKINS. Take out all the certificates authorizing holding courts.

Mr. THURSTON. Mr. President—

The PRESIDING OFFICER. One moment. The Presiding Officer is at a loss to understand how the reporter or the Secretary can make this computation of days about which manager and counsel disagree.

Mr. THURSTON. We are not asking that now, Mr. President—

Mr. Manager PERKINS. Put in the certificates themselves as to the days.

Mr. THURSTON. So much of each certificate as shows the days and the places.

The PRESIDING OFFICER. Will the managers and counsel instruct the reporter as to how much shall appear in the record, and if more

than one certificate, specify what portion of the certificate it is desired shall be put in the record?

Mr. THURSTON. Then, Mr. President, there is very little to these certificates except the dates, and we will offer them here and let them all go in.

The PRESIDING OFFICER. Is it desired that the entire certificate shall be printed in the record?

Mr. THURSTON. In the record.

The certificates referred to are as follows:

In the circuit court of the United States for the northern district of Texas.

I, J. H. Finks, clerk of the circuit court of the United States for the northern district of Texas, do hereby certify that the records of the United States circuit court for the northern district of Texas, at Fort Worth, Tex., show that the Hon. Charles Swayne, United States district judge for the northern district of Florida, held court at Fort Worth (by designation of the Hon. A. P. McCormick, United States circuit judge) on each of the following days, viz, 1897, March 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, the same being the March term, 1897, of said circuit court.

In testimony whereof witness my hand officially and the seal of said circuit court, at Fort Worth, Tex., this the 6th day of February, A. D. 1905.

[SEAL.]

J. H. FINKS, *Clerk of said Court,*
By J. B. FINKS, *Deputy.*

EXHIBIT A.

UNITED STATES OF AMERICA,
Fifth Judicial Circuit:

Whereas it appears by the certificate of J. H. Finks, esq., clerk of the circuit and district courts of the United States in and for the northern district of Texas, that the Hon. John B. Rector, United States district judge for said district, is prevented by physical disability from holding the stated terms of said courts at Waco, Tex., to convene on November 18, 1895; and

Whereas in my judgment the public interests require the designation and appointment of the judge of some other district in the fifth circuit to hold said terms of court and to discharge all the judicial duties of the judge of said district pertaining thereto:

Now, therefore, I, Don A. Pardee, circuit judge of the fifth judicial circuit, do hereby designate and appoint the Hon. Charles Swayne, judge of the northern district of Florida, to hold the said terms of the circuit and district courts at Waco, Tex., in said northern district, and to discharge all the judicial duties pertaining thereto, pending the disability of the said John D. Rector, district judge of said district as aforesaid.

Witness my hand this 16th day of November, 1895.

(Signed)

DON A. PARDEE, *Circuit Judge.*

The UNITED STATES OF AMERICA,
Western District of Texas:

I, D. H. Hart, clerk of the circuit and district courts of the United States for the western district of Texas, do hereby certify that the above and foregoing is a true and correct copy of the order of Hon. Don A. Pardee, United States circuit judge for the fifth circuit, designating and appointing the Hon. Charles Swayne, United States district judge, to hold the November term, 1895, of the United States circuit and district courts for the northern district of Texas, at Waco, as fully as the same remains of record in my office at Waco, in circuit court minute book, vol. 3, page 562, and in district court minute book, vol. 2, page 301.

Witness my official signature and the seals of said circuit and district courts of the United States for the western district of Texas, at Waco, Tex., this 7th day of February, A. D. 1905.

[SEAL.]

D. H. HART, *Clerk,*
By J. B. McCULLOCH, *Deputy.*

EXHIBIT B.

UNITED STATES OF AMERICA,
Fifth Judicial Circuit:

Whereas it has been made known to me by the certificate of the clerk that the Hon. John B. Rector, United States district judge for the northern district of Texas, is prevented by physical disability from holding the stated terms of the district and circuit courts of the United States for the northern district of Texas, at Waco, to begin on April 13, 1896, and whereas, in my judgment, the public interests so require: Therefore,

I, Andrew P. McCormick, United States circuit judge for the fifth judicial circuit, do hereby designate and appoint the Hon. Charles Swayne, United States district judge for the northern district of Florida, in the place and stead of the Hon. John B. Rector, district judge, to hold said district and circuit courts of the United States, at Waco, Tex., beginning on April 13, 1896, and to discharge all the judicial duties of the Hon. John B. Rector, district judge, while acting under this designation.

Witness my hand this 31st day of March, 1896.

(Signed)

ANDREW P. MCCORMICK,
Circuit Judge.

The UNITED STATES OF AMERICA,
Western District of Texas:

I, D. H. Hart, clerk of the circuit and district courts of the United States for the western district of Texas, do hereby certify that the above and foregoing is a true and correct copy of the order of Hon. Andrew P. McCormick, United States circuit judge for the fifth circuit, designating and appointing the Hon. Charles Swayne, United States district judge, to hold the April term, 1896, of the United States circuit and district courts for the northern district of Texas, at Waco, as fully as same remains of record in my office, at Waco, in circuit court minute book, vol. 3, page 616, and in district court minute book, vol. 2, page 355.

Witness my official signature and the seals of said circuit and district courts of the United States for the western district of Texas, at Waco, Tex., this 7th day of February, A. D. 1905.

[SEAL.]

D. H. HART, *Clerk,*
By J. B. McCulloch, *Deputy.*

EXHIBIT C.

The UNITED STATES OF AMERICA,
Fifth Judicial Circuit:

Whereas in my opinion the accumulation of business in the district and circuit courts of the United States for the northern district of Texas requires the designation and appointment of another judge in aid of the judge of said district;

Now, therefore, I, Andrew P. McCormick, United States circuit judge for the fifth judicial circuit, in accordance with the provisions of section 592 of the Revised Statutes of the United States, do hereby designate and appoint the Hon. Charles Swayne, United States district judge for the northern district of Florida, in aid of the Hon. John B. Rector, United States district judge for the northern district of Texas, to hold the terms of said courts at Waco, Tex., beginning on the third Monday of November, 1896, and the terms of said courts at Dallas, Tex., beginning on the second Monday in January, 1897, and to have and exercise in the northern district of Texas during the time of this designation the same powers that are vested in the judge thereof.

Witness my hand at office in Dallas, Tex., this the 4th day of November, A. D. 1896.

(Signed)

A. P. MCCORMICK,
United States Circuit Judge.

The UNITED STATES OF AMERICA,
Western District of Texas:

I, D. H. Hart, clerk of the circuit and district courts of the United States for the western district of Texas, do hereby certify that the above and foregoing is a true and correct copy of the order of Hon. A. P. McCormick, United States circuit judge for the fifth circuit, designating and appointing the Hon. Charles Swayne, United States district judge, to hold the November term, 1896, of the United States circuit and district courts for the northern district of Texas, at Waco, as fully as same remains of

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record in my office at Waco, in circuit court minute book, volume 4, page 16, and in district court minute book, volume 2, page 383.

Witness my official signature and the seals of said circuit and district courts of the United States for the western district of Texas, at Waco, Tex., this 7th day of February, A. D. 1905.

[SEAL.]

D. H. HART, *Clerk*,
By J. B. McCULLOCH, *Deputy*.

EXHIBIT D.

THE UNITED STATES OF AMERICA, *Fifth Judicial Circuit*:

Whereas it has been made to appear to me from the certificate of the clerk of the district court of the United States for the northern district of Texas, under the seal of said court, that the Hon. John B. Rector, United States district judge for said district, is prevented by physical disability from holding the stated terms of the district and circuit courts of the United States in and for the northern district of Texas, to be begun and held at Waco, Tex., on the second Monday in April, 1897; and

Whereas, in my judgment, the public interests so require: Now, therefore, I, Andrew P. McCormick, United States circuit judge for the fifth judicial circuit, do hereby designate and appoint the Hon. Charles Swayne, United States district judge for the northern district of Florida, to hold the said terms of said circuit and district courts of the United States in the northern district of Texas, at Waco, Tex., beginning on the second Monday in April, 1897, and to discharge all the judicial duties of the said judge so disabled, during the time of this designation, in accordance with the provisions of section 591 of the Revised Statutes of the United States.

(Signed)

ANDREW P. MCCORMICK,
Circuit Judge.

DALLAS, TEX., *March 27, 1897*.

THE UNITED STATES OF AMERICA, *Western District of Texas*:

I, D. H. Hart, clerk of the circuit and district courts of the United States for the western district of Texas, do hereby certify that the above and foregoing is a true and correct copy of the order of Hon. Andrew P. McCormick, United States circuit judge for the fifth circuit, appointing and designating the Hon. Charles Swayne, United States district judge, to hold the April term, 1897, of the United States circuit and district courts for the northern district of Texas, at Waco, as fully as same remains of record in my office at Waco, in Circuit Court Minute Book, vol. 4, page 123, and in District Court Minute Book, vol. 2, page 432.

Witness my official signature and the seals of said circuit and district courts of the United States for the western district of Texas, at Waco, Tex., this 7th day of February, A. D. 1905.

[SEAL.]

D. H. HART, *Clerk*,
By J. B. McCULLOCH, *Deputy*.

THE UNITED STATES OF AMERICA, *Western District of Texas*:

I, D. H. Hart, clerk of the circuit court of the United States for the western district of Texas, do hereby certify that in pursuance of an order of the Hon. Don A. Pardee, circuit judge of the United States for the fifth judicial circuit, dated November 16, A. D. 1895, and duly entered of record in the minutes of this court at Waco, in volume 3, page 562, a true copy of same duly certified being attached hereto, marked "Exhibit A," the Hon. Charles Swayne, United States district judge for the northern district of Florida, did convene and hold at Waco the November term, 1895, of the United States circuit for the northern district of Texas (Waco and the counties returnable thereto being at said time incorporated in and a part of the northern judicial district of Texas), said court being open for business and the said Charles Swayne, special judge, present and presiding on the following days, to wit: November 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30; December 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20, and 21, A. D. 1895.

I further certify that in pursuance of an order of the Hon. Andrew P. McCormick, circuit judge of the United States for the fifth judicial circuit, dated March 31, 1896, and duly entered of record in the minutes of this court at Waco, in volume 3, page 616, a true copy of same duly certified being attached hereto, marked "Exhibit B," the Hon. Charles Swayne, United States district judge for the northern district of

Florida, did convene and hold at Waco the April term, 1896, of the United States circuit court for the northern district of Texas (Waco and the counties returnable thereto being at said time incorporated in and a part of the northern judicial district of Texas), said court being open for business and the said Charles Swayne, special judge, present and presiding on the following days, to wit: April 27, 28, 29, 30; May 1, 2, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, and 16, A. D. 1896.

I further certify that in pursuance of an order of the Hon. A. P. McCormick, circuit judge of the United States for the fifth judicial circuit, dated November 4, 1896, and duly entered of record in the minutes of this court at Waco, in volume 4, page 16, a true copy of same duly certified being attached hereto, marked "Exhibit C," the Hon. Charles Swayne, United States district judge for the northern district of Florida, did convene and hold at Waco the November term, 1896, of the United States circuit court for the northern district of Texas (Waco and the counties returnable thereto being at said time incorporated in and a part of the northern judicial district of Texas), said court being open for business, and the said Charles Swayne, special judge, present and presiding on the following days, to wit: November 18, 19, 20, 21, 23, 24, 25, 26, 27, 28, and 30; December 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, and 19, A. D. 1896. (On November 16 and 17, 1896, Judge Swayne not being present, court was opened and closed by the United States marshal.)

I further certify that in pursuance of an order of the Hon. Andrew P. McCormick, circuit judge of the United States for the fifth judicial circuit, dated March 27, 1897, and duly entered of record in the minutes of this court at Waco, in volume 4, page 123, a true copy of same duly certified being attached hereto, marked "Exhibit D," the Hon. Charles Swayne, United States district judge for the northern district of Florida, did convene and hold at Waco the April term, 1897, of the United States circuit court for the northern district of Texas (Waco and the counties returnable thereto being at said time incorporated in and a part of the northern judicial district of Texas), said court being open for business, and the said Charles Swayne, special judge, present and presiding on the following days, to wit: April 20, 21, 22, 23, 24, 26, 27, 28, 29, and 30, May 1, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, and 15, A. D. 1897. (On April 12, 1897, by written order of Hon. Charles Swayne, the court was adjourned by the United States marshal until April 20, 1897.)

I further certify that after a careful examination of the records of this court at Waco I find no record of any term of said court, or any portion of any term, special or otherwise, having been held by the said the Hon. Charles Swayne, United States district judge as aforesaid, between and including the years 1894 and 1903.

I further certify that upon the various dates above mentioned upon which the respective terms of court were held at the Waco division by the Hon. Charles Swayne the said Waco division was included in the northern judicial district of Texas, but by act of Congress same was, on the 1st day of July, A. D. 1902, transferred to and made a part of the western district of Texas and is now included in said last-named district.

In witness whereof I hereto affix my official signature and the seal of said circuit court at my office in the city of Waco, Tex., this 7th day of February, A. D. 1905.

[SEAL.]

D. H. HART, Clerk.
By L. B. McCULLOCH, Deputy.

THE UNITED STATES OF AMERICA,
Western District of Texas:

I, D. H. Hart, clerk of the district court of the United States for the western district of Texas, do hereby certify that in pursuance of an order of the Hon. Don A. Pardee, circuit judge of the United States for the fifth judicial circuit, dated November 16, A. D. 1895, and duly entered of record in the minutes of this court at Waco, in volume 2, page 301, a true copy of same duly certified to being attached hereto, marked "Exhibit A," the Hon. Charles Swayne, United States district judge for the northern district of Florida, did convene and hold at Waco the November term, 1895, of the United States district court for the northern district of Texas (Waco and the counties returnable thereto being at said time incorporated in and a part of the northern judicial district of Texas), said court being open for business and the said Charles Swayne, special judge, present and presiding on the following days, to wit: November 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, December 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20, and 21, A. D. 1895.

I further certify that in pursuance of an order of the Hon. Andrew P. McCormick, circuit judge of the United States for the fifth judicial circuit, dated March 31, 1896, and duly entered of record in the minutes of this court at Waco, in volume 2, page 355, a true copy of same duly certified being attached hereto, marked "Exhibit B,"

the Hon. Charles Swayne, United States district judge for the northern district of Florida, did convene and hold at Waco the April term, 1896, of the United States district court for the northern district of Texas (Waco and the counties returnable thereto being at said time incorporated in and a part of the northern judicial district of Texas), said court being open for business and the said Charles Swayne, special judge, present and presiding on the following days, to wit: April 27, 28, 29, 30, May 1, 2, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, and 16, A. D. 1896.

I further certify that in pursuance of an order of the Hon. A. P. McCormick, circuit judge of the United States for the fifth judicial circuit, dated November 4, 1896, and duly entered of record in the minutes of this court at Waco in volume 2, page 383, a true copy of same duly certified being attached hereto, marked "Exhibit C," the Hon. Charles Swayne, United States district judge for the northern district of Florida, did convene and hold at Waco the November term (1896) of the United States district court for the northern district of Texas (Waco and the counties returnable thereto being at said time incorporated in and a part of the northern judicial district of Texas), said court being open for business, and the said Charles Swayne, special judge, present and presiding on the following days, to wit: November 18, 19, 20, 21, 23, 24, 25, 26, 27, 28, and 30; December 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, and 19, A. D. 1896. (On November 16 and 17, 1896, Judge Swayne not being present, court was opened and closed by the United States marshal.)

I further certify that in pursuance of an order of the Hon. Andrew P. McCormick, circuit judge of the United States for the fifth judicial circuit, dated March 27, 1897, and duly entered of record in the minutes of this court at Waco in volume 2, page 432, a true copy of same, duly certified, being attached hereto, marked "Exhibit D," the Hon. Charles Swayne, United States district judge for the northern district of Florida, did convene and hold at Waco the April term (1897) of the United States district court for the northern district of Texas (Waco and the counties returnable thereto being at said time incorporated in and a part of the northern judicial district of Texas), said court being open for business, and the said Charles Swayne, special judge, present and presiding on the following days, to wit: April 20, 21, 22, 23, 24, 26, 27, 28, 29, and 30; May 1, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, and 15, A. D. 1897 (On April 12, 1897, by written order of Hon. Charles Swayne the court was adjourned by the United States marshal until April 20, 1897.)

I further certify that after a careful examination of the records of this court at Waco I find no record of any term of said court, or any portion of any term, special or otherwise, having been held by the said the Hon. Charles Swayne, United States district judge as aforesaid, between and including the years 1894 and 1903.

I further certify that upon the various dates above mentioned, upon which the respective terms of court were held at the Waco division by the Hon. Charles Swayne, the said Waco division was included in the northern judicial district of Texas, but by act of Congress same was on the 1st day of July, A. D. 1902, transferred to and made a part of the western district of Texas and is now included in said last-named district.

In witness whereof I hereto affix my official signature and the seal of said district court at my office in the city of Waco, Tex., this 7th day of February, A. D. 1905.

[SEAL.]

D. H. HART, Clerk,
By L. B. McCULLOCH, Deputy.

EXHIBIT E.

In the United States circuit court of appeals for the fifth judicial circuit.

UNITED STATES OF AMERICA,

Fifth Judicial Circuit, ss:

I, Charles H. Lednum, clerk of the circuit court of appeals of the United States for the fifth judicial circuit, do hereby certify that I have carefully examined the records and proceedings of said court and find that on page 82, minute book 3, under date of June 8, 1897, appears the following order, viz:

"Ordered, That for the next term, commencing on the third Monday in November, 1897, the Hon. Charles Swayne, judge of the northern district of Florida, and the Hon. David E. Bryant, judge of the eastern district of Texas, be, and they are hereby, designated to sit as judges in this court whenever, by reason of the absence of the circuit justice, or either of the circuit judges, the presence of one or more district judges shall be necessary to constitute a full bench.

"Judge Swayne will be expected to attend regularly during the months of November, December, January, and February, and thereafter during the term as the busi-

ness of the court may require, and Judge Bryant during the months of March, April, May, and June, and otherwise during the first part of the term as the business of the court may require."

And on page 347, minute book 3, under date of November 21, 1898, appears the following order, viz:

"Ordered, That the Hon. Charles Swayne, United States district judge for the northern district of Florida, be, and he is hereby, designated to sit as one of the judges of this court at the present term for two weeks, and until Circuit Judge McCormick shall be able to attend."

And that pursuant to and in accordance with said orders the Hon. Charles Swayne, United States district judge for the northern district of Florida, attended and was present and sitting as a member of said court on the following days, viz:

January 3, 17, 18, 19, 20, 21, 22, 24, 25, 26, 27, 28, 29, 31; February 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, 28; March 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, 28, 29, 30, 31; April 1, 2, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30; May 2, 3, 4, 5, 6, 7, 8, 10, 17, 24, 25, 26, 27, 28; November 21, 22, 23, 24, 25, 26, 28, 29, 30; December 1, 2, 3, 1898; January 30, 31; February 1, 2, 3, 4, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 27, 28; March 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 1899.

And I further certify that the orders above copied and set out are true, correct, complete, and full copies of the original orders of the said court, as the same appear enrolled and entered upon the minutes and proceedings of said court, on the pages and in the books, respectively, as stated, and which said records and books are now in my custody and possession by virtue of my official position.

Witness my official signature and the seal of the said circuit court of appeals of the United States for the fifth judicial circuit at the city of New Orleans, in the State of Louisiana, on this the 8th day of February, in the year of our Lord 1905, and of the Independence of the United States the one hundred and thirtieth.

[SEAL.]

CHARLES H. LEDNUM,
Clerk of the Circuit Court of Appeals of the
United States for the Fifth Judicial Circuit.

EXHIBIT F.

UNITED STATES OF AMERICA.

Fifth Judicial Circuit:

Considering the certificate of D. W. Parish, esq., clerk of the United States district court for the eastern district of Texas, hereto attached, and it being my judgment that the public interests require the designation and appointment of the judge of another district in the fifth circuit in aid of the Hon. David Bryant, judge of the eastern district of Texas, with authority to hold the district and circuit courts in said district, and to discharge all judicial duties devolving upon a judge of the district:

Now, therefore, I, Don A. Pardee, circuit judge of the fifth judicial circuit, do hereby designate and appoint the Hon. Charles Swayne, judge of the northern district of Florida, to have and exercise within the eastern district of Texas the same powers that are vested in the judge thereof and with the judge of the said district to hold separately at the same time district and circuit courts in said district and discharge all the judicial duties of the judge therein, and particularly to hold a special term of the district court for the eastern district of Texas, at Tyler, Tex., commencing June 18, 1900.

Witness my hand this 17th day of May, A. D. 1900.

DON A. PARDEE, *Circuit Judge.*

(Indorsements: Order of Judge Don A. Pardee designating Hon. Charles Swayne, etc. Filed May 19, 1900. D. W. Parish, clerk. Extract from minutes of the district court of the United States. For the eastern district of Texas, at Tayler, Tex. Vol. D, p. 177.)

United States circuit court.

UNITED STATES OF AMERICA,

Fifth Judicial Circuit:

It appearing from the certificate herewith filed, of the clerk of the United States district court for the eastern district of Texas, at Tyler, Tex., that from the accumu-

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lation and urgency of business pending in the district and circuit courts of the United States for the eastern district of Texas, at Tyler, Tex., the public interests require the designation and appointment of a judge to hold the special term of the United States district court for said eastern district, heretofore ordered to be convened and held on the 3d day of December, A. D. 1900.

Now, therefore, in consideration of sections 592-596, Revised Statutes, I, Don A. Pardee, circuit judge, do hereby designate and appoint Hon. Charles Swayne, judge of the northern district of Florida, in said circuit, in aid of the judge of the eastern district of Texas, and to have and exercise within the said eastern district of Texas the same powers that are vested in the judge thereof, and particularly to hold the special term of the United States district court for said eastern district at Tyler, Tex., heretofore ordered to be convened and held on the 3d day of December, A. D. 1900.

Witness my hand this 12th day of November, A. D. 1900.

DON A. PARDEE, *Circuit Judge.*

(Indorsed:) Order designating and appointing Hon. Charles Swayne, judge of the United States district court for the northern district of Florida, to hold the special term of the United States district court for the eastern district of Texas, to convene at Tyler, Texas, on the 3d day of December, A. D. 1900. Filed and entered of record November 14th, 1900. D. W. Parish, clerk. (Extract from the minutes of the district court of the United States for the eastern district of Texas, from Vol. D, page 217.)

United States circuit court.

UNITED STATES OF AMERICA,

Fifth Judicial Circuit:

It appearing from the certificate herewith filed of the United States district court for the eastern district of Texas, at Tyler, Tex., that from the accumulation and urgency of business pending in the district and circuit courts of the United States for the eastern district of Texas, at Tyler, Tex., the public interests require the designation and appointment of a judge to hold the special term of the United States district court for the eastern district of Texas, at Tyler, Tex., heretofore ordered to be convened and held on the 13th day of January, A. D. 1902:

Now, therefore, in consideration of sections 592-596, Revised Statutes, I, Don A. Pardee, circuit judge, do hereby designate and appoint Hon. Charles Swayne, judge of the northern district of Florida, in said circuit, in aid of the judge of the eastern district of Texas, and to have and exercise within the said eastern district of Texas the same powers that are vested in the judge thereof, and particularly to hold the special term of the United States district court for said eastern district, at Tyler, Tex., heretofore ordered to be convened and held on the 13th day of January, A. D. 1902.

Witness my hand this 18th day of December, A. D. 1901.

DON A. PARDEE, *Circuit Judge.*

(Indorsements:) Order designating Charles Swayne, judge of the United States district court for the northern district of Florida, to hold the special term of the United States district court for the eastern district of Texas, at Tyler, Tex., to convene January 13, 1902. Filed and recorded December 23, 1901. D. W. Parish, clerk.

(Extract from the minutes of the district court of the United States for the eastern district of Texas. From Vol. D, p. 300.)

UNITED STATES OF AMERICA,

Fifth Judicial Circuit:

Considering the certificate of J. W. Butler, esq., clerk of the United States district court for the eastern district of Texas, hereto attached, and it being my judgment that the public interest require the designation and appointment of the judge of another district in the fifth circuit in aid of the Hon. David Bryant, judge of the eastern district of Texas, with authority to hold the district and circuit courts in said district and to discharge all judicial duties devolving upon a judge of the district:

Now, therefore, I, Don. A. Pardee, circuit judge of the fifth judicial circuit, do hereby designate and appoint the Hon. Charles Swayne, judge of the northern district of Florida, to have and exercise within the eastern district of Texas the same powers that are vested in the judge thereof, and with the judge of the said district to hold separately at the same time district and circuit courts in said district and dis-

charge all the judicial duties of the judge therein, and particularly to hold a special term of the district court for the eastern district of Texas at Tyler, Tex., commencing January 12, A. D. 1903.

Witness my hand this 15th day of December, A. D. 1902.

DON. A. PARDEE, *Circuit Judge.*

Filed and recorded December 17, 1902.

J. W. BUTLER, *Clerk.*

(Extract from the minutes of the district court of the United States for the eastern district of Texas. From Vol. D, p. 331.)

In the district court of the United States for the eastern district of Texas, at Tyler.

I, A. O. Brackett, clerk of the district court of the United States for the eastern district of Texas, at Tyler, in the fifth circuit and district aforesaid, do hereby certify the foregoing to be true and correct copies of all of the orders designating Hon. Charles Swayne, judge of the northern district of Florida, to hold court at Tyler, in the eastern district of Texas, from 1895 to 1903, inclusive, as the same now appears on file and of record in my office.

To certify which, witness my hand and the seal of said court, at Tyler, in said district, this the 6th day of February, A. D. 1905.

[SEAL.]

A. O. BRACKETT,
Clerk United States District Court, E. D. T.,
By J. W. BUTLER, *Deputy.*

Statement of the days and dates upon which Hon. Charles Swayne, judge of the northern district of Florida, held district court in the eastern district of Texas, at Tyler, from 1895 to 1903, inclusive.

June 18, 19, 20, 21, 22, 23, 25, 26, 27, and 28, 1900, as is shown from the minutes of said court in Volume D, on pages from 183 to 196, inclusive.

December 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, 24, 25, 26, 27, 28, and 29, 1900, as is shown from the minutes of said court in Volume D, on pages from 222 to 260, inclusive.

January 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, 31, and February 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, and 16, 1903, as is shown from the minutes of said court in Volume D, on pages from 338 to 376, inclusive.

I, A. O. Brackett, clerk of the district court of the United States for the eastern district of Texas, at Tyler, in the fifth circuit and district aforesaid, do hereby certify that the above is a true and correct statement of the days and dates upon which Hon. Charles Swayne, judge of the northern district of Florida, held court at Tyler, Tex., as the same appears from the records in my office.

To certify which, witness my hand and the seal of said court, at Tyler, in said district, this the 6th day of February, A. D. 1905.

[SEAL.]

A. O. BRACKETT,
Clerk United States District Court, Eastern District of Texas,
By J. W. BUTLER, *Deputy.*

EXHIBIT G.

[District court of the United States, eastern district of Louisiana.]

I, Frank Hastings Mortimer, clerk of the district court of the United States in and for the eastern district of Louisiana, do hereby certify that the minutes of said court for the New Orleans division thereof show that the Hon. Charles Swayne, judge, presided at the sessions of said court held at the city of New Orleans, State of Louisiana, on the following days, viz: April 19, 20, 25, 26, 27, 29, 30, 1895; May 1, 2, 3, 4, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 27, 28, 29, 30, 31, 1895.

I further certify that the minutes of said court for the Baton Rouge division thereof show that the Hon. Charles Swayne, judge, presided at the session of said court at the city of Baton Rouge, State of Louisiana, on the following days, viz: April 22, 23, 24, 1895.

Witness my hand and the seal of said court at the city of New Orleans, La., this 8th day of February, A. D. 1905.

[SEAL.]

FRANK HASTINGS MORTIMER, *Clerk.*

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I, Charles Parlange, United States judge for the eastern district of Louisiana, do certify that Frank Hastings Mortimer, whose name is signed to the foregoing certificate as clerk of the district court for the eastern district of Louisiana, was, at the time of signing the same, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district, this 8th day of February, A. D. 1905.

CHARLES PARLANGE, *United States Judge.*

District court of the United States, eastern district of Louisiana.

I, Frank Hastings Mortimer, clerk of the district court of the United States in and for the eastern district of Louisiana, do hereby certify that the minutes of the said court for the New Orleans division thereof show that the Hon. Charles Swayne, judge, presided at the sessions of said court held at the city of New Orleans, State of Louisiana, on the following days, viz: May 24, 25, 26, 28, 29, 30, 31, 1900; June 1, 2, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 1900.

Witness my hand and the seal of said court at the city of New Orleans, La., this 8th day of February, A. D. 1905.

[SEAL.]

FRANK HASTINGS MORTIMER, *Clerk.*

I, Charles Parlange, United States judge for the eastern district of Louisiana, do certify that Frank Hastings Mortimer, whose name is signed to the foregoing certificate as clerk of the district court for the eastern district of Louisiana, was, at the time of signing the same, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand at the city of New Orleans, in said district, this 8th day of February, A. D. 1905.

CHARLES PARLANGE,
United States Judge.

EXHIBIT H.

[From the minutes of the circuit court of the United States for the northern district of Texas, at Dallas.]

DALLAS, TEX., *January 13, 1896.*

Be it remembered that on this the 13th day of January, 1896, the same being the second Monday in said month, the circuit court of the United States in the fifth circuit and in and for the northern district of Texas, met at Dallas, Tex., pursuant to law.

Present: Hon. W. O. Hamilton, district attorney; R. M. Love, marshal, and J. H. Finks, clerk, by his deputy, Charles H. Lednum, when and where the following proceedings were had and done, to wit:

Upon the written order of the Hon. Charles Swayne, United States district judge for the northern district of Florida, designated and appointed to hold the court in this district, the marshal adjourned the court until Monday morning, January 20, 1896, at 10 o'clock.

MONDAY, *January 20, 1896.*

Court met pursuant to adjournment, same officers present as on preceding day, and also J. H. Finks, clerk, when and where the following proceedings were had and done, to wit:

Hon. Charles Swayne, United State district judge, failing to be present to preside over the court, the marshal thereupon adjourned court until Tuesday morning at 10 o'clock.

TUESDAY, *January 21, 1896.*

Court met pursuant to adjournment. Present: Hon. Charles Swayne, United States district judge, presiding; W. O. Hamilton, district attorney; R. M. Love, marshal, and J. H. Finks, clerk, and his deputy, Charles H. Lednum, when and where the following proceedings were had and done, to wit, Judge Swayne present on following days: January 22, 23, 24, 25, 27, 28, 29, 30, 31; February 1, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, 24, 25, 26, 27, 28, 29; March 2, 3, 4, 5, 6, 1896.

May term, 1896: May 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30; June 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, 19, 20, 22, 23, 24, 25, 26, 27.

January term, 1897: January 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30; February 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, 19, 20, 22, 23, 24, 25, 26, 27.

May term, 1897: May 17, 18, 19, 20, 21, 22, 24, 25, 26, 27, 28, 29, 31; June 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, 28, 29, 30, July 1.

I, J. H. Finks, clerk of the United States district and circuit courts, fifth circuit and northern district of Texas, do hereby certify that the records of the said courts at Dallas, Tex., show that the Hon. Charles Swayne, United States district judge for the northern district of Florida, held court at Dallas by designation on each of the preceding days as stated above and for the terms therein mentioned.

In testimony whereof, witness my hand and seal of said United States circuit court, at Dallas, Tex., this the 7th day of February, A. D. 1905.

[SEAL.]

J. H. FINKS,
Clerk of the United States Circuit Court.

Certificate of H. J. Carter, clerk United States circuit court eastern district of Louisiana, as to days on which Judge Charles Swayne held the circuit court in New Orleans in May, 1898.

I, Henry J. Carter, clerk of the circuit court of the United States for the fifth judicial circuit and eastern district of Louisiana, do hereby certify that in pursuance of an order made by the Hon. Don A. Pardee, United States circuit judge for the fifth judicial circuit, on the 10th day of May, 1898, and entered on said date, designating the Hon. Charles Swayne, judge of the northern district of Florida, to act in the eastern district of Louisiana in aid of the Hon. Charles Parlange, judge of the eastern district of Louisiana, the said Hon. Charles Swayne, judge aforesaid, held sessions of the United States circuit court for the eastern district of Louisiana, as appears from the minutes of said court, on the following days, to wit: In the city of New Orleans, 1898, May 11, 12, 13, 14, 16, 17, 18, 19, 20, 21, 23, 24, 27.

Witness my hand and the seal of said court at the city of New Orleans this 8th day of February, A. D. 1905.

[SEAL.]

H. J. CARTER, *Clerk.*

I, Charles Parlange, United States judge for the eastern district of Louisiana, do certify that Henry J. Carter, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court, that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand at the city of New Orleans, in said district, this 8th day of February, A. D. 1905.

CHARLES PARLANGE, *Judge.*

Certificate of H. J. Carter, clerk United States circuit court, eastern district of Louisiana, as to days on which Judge Charles Swayne held the circuit court in New Orleans in March, 1899.

I, Henry J. Carter, clerk of the circuit court of the United States for the fifth judicial circuit and eastern district of Louisiana, do hereby certify that in pursuance of an order made by the Hon. A. P. McCormick, United States circuit judge for the fifth judicial circuit, on the 4th day of March, 1899, and entered on said date, designating the Hon. Charles Swayne, judge of the northern district of Florida, to act in the eastern district of Louisiana in aid of the Hon. Charles Parlange, judge of the eastern district of Louisiana, the said Hon. Charles Swayne, judge aforesaid, held sessions of the United States circuit court for the eastern district of Louisiana, as appears from the minutes of said court, on the following days, to wit, in the city of New Orleans March 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 1899.

Witness my hand and the seal of said court at the city of New Orleans this 8th day of February, A. D. 1905.

[SEAL.]

H. J. CARTER, *Clerk.*

I, Charles Parlange, United States judge for the eastern district of Louisiana, do certify that Henry J. Carter, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand at the city of New Orleans, in said district, this 8th day of February, A. D. 1905.

CHARLES PARLANGE, *Judge*.

Certificate of H. J. Carter, clerk United States circuit court, eastern district of Louisiana, as to days on which Hon. Charles Swayne, judge, held the circuit court in New Orleans in May and June, 1900.

I, Henry J. Carter, clerk of the circuit court of the United States for the fifth judicial circuit and eastern district of Louisiana, do hereby certify that in pursuance of an order made by the Hon. Don A. Pardee, United States circuit judge for the fifth judicial circuit, on the 12th day of May, 1900, and entered on said date, designating the Hon. Charles Swayne, judge of the northern district of Florida, to act in the eastern district of Louisiana in aid of the Hon. Charles Parlange, judge of the eastern district of Louisiana, the said Hon. Charles Swayne, judge aforesaid, held sessions of the United States circuit court for the eastern district of Louisiana, as appears from the minutes of said court, on the following days, to wit: In the city of New Orleans, May 24, 25, 26, 28, 29, 30, 31, June 1, 2, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 1900.

Witness my hand and the seal of said court at the city of New Orleans this 8th day of February, A. D. 1905.

[SEAL.]

H. J. CARTER, *Clerk*.

I, Charles Parlange, United States judge for the eastern district of Louisiana, do certify that Henry J. Carter, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law and that full faith and credit are due to his official attestations as such clerk.

Given under my hand at the city of New Orleans, in said district, this 8th day of February, A. D. 1905.

CHARLES PARLANGE, *Judge*.

Certificate of H. J. Carter, clerk of United States circuit court, eastern district of Louisiana, as to days on which Hon. Charles Swayne held the circuit court in Baton Rouge, in April, 1895.

I, Henry J. Carter, clerk of the circuit court of the United States for the fifth judicial circuit and eastern district of Louisiana, do hereby certify that in pursuance of an order made by the Hon. Don A. Pardee, United States circuit judge for the fifth judicial circuit, entered on the 19th day of April, 1895, designating the Hon. Charles Swayne, judge of the northern district of Florida, to act in the eastern district of Louisiana, pending the disability of the Hon. Charles Parlange, judge of the eastern district of Louisiana, the said Hon. Charles Swayne, judge aforesaid, held a session of the United States circuit court for the eastern district of Louisiana, in the city of Baton Rouge, La., on the following days, to wit, April 22, 23, 24, 1895.

Witness my hand and the seal of said court at the city of New Orleans this 8th day of February, A. D. 1905.

[SEAL.]

H. J. CARTER, *Clerk*.

I, Charles Parlange, United States judge for the eastern district of Louisiana, do certify that Henry J. Carter, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand at the city of New Orleans in said district this 8th day of February, A. D. 1905.

CHARLES PARLANGE, *Judge*.

Certificate as to the days on which the district court for eastern district of Louisiana was held in May, 1898, by the Hon. Charles Swayne, judge.

I, Frank Hastings Mortimer, clerk of the district court of the United States in and for the eastern district of Louisiana, do hereby certify that the minutes of said court for the New Orleans division thereof show that the Hon. Charles Swayne, judge, presided at the sessions of said court held at the city of New Orleans, State of Louisiana, on the following days, viz: May 11, 12, 13, 14, 16, 17, 18, 19, 20, 21, 23, 24, 27, 28, 1898.

Witness my hand and the seal of said court at the city of New Orleans, La., this 8th day of February, A. D. 1905.

[SEAL.]

FRANK HASTINGS MORTIMER, *Clerk.*

I, Charles Parlange, United States judge for the eastern district of Louisiana, do certify that Frank Hastings Mortimer, whose name is signed to the foregoing certificate as clerk of the district court for the eastern district of Louisiana, was, at the time of signing the same, and is now the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand at the city of New Orleans, in said district, this 8th day of February, A. D. 1905.

CHARLES PARLANGE,
United States Judge.

Certificate of H. J. Carter, clerk United States circuit court eastern district of Louisiana, as to days on which Judge Charles Swayne held the circuit court in New Orleans in April and May, 1895.

I, Henry J. Carter, clerk of the circuit court of the United States for the fifth judicial circuit and eastern district of Louisiana, do hereby certify that, in pursuance of an order made by the Hon. Don. A. Pardee, United States circuit judge for the fifth judicial circuit, entered on the 19th day of April, 1895, designating the Hon. Charles Swayne, judge of the northern district of Florida, to act in the eastern district of Louisiana pending the disability of the Hon. Charles Parlange, judge of the eastern district of Louisiana, the said Hon. Charles Swayne, judge aforesaid, held sessions of the United States circuit court for the eastern district of Louisiana, as appears from the minutes of said court, on the following days, to wit, in the city of New Orleans: April 19, 20, 25, 26, 27, 29, 30; May 1, 2, 3, 4, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 27, 28, 29, 30, 31, 1895.

Witness my hand and the seal of said court, at the city of New Orleans, this 8th day of February, A. D. 1905.

[SEAL.]

H. J. CARTER, *Clerk.*

I, Charles Parlange, United States judge for the eastern district of Louisiana, do certify that Henry J. Carter, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, was at the time of signing said certificate and is now the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand at the city of New Orleans, in said district, this 8th day of February, A. D. 1905.

CHARLES PARLANGE, *Judge.*

Certificate as to the days on which the United States district court for eastern district of Louisiana was held in March, 1899, by the Hon. Charles Swayne, judge.

I, Frank Hastings Mortimer, clerk of the district court of the United States in and for the eastern district of Louisiana, do hereby certify that the minutes of said court for the New Orleans division thereof show that the Hon. Charles Swayne, judge, presided at the sessions of said court held at the city of New Orleans, State of Louisiana, on the following days, viz: March 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 1899.

Witness my hand and the seal of said court at the city of New Orleans, La., this 8th day of February, A. D. 1905.

[SEAL.]

FRANK HASTINGS MORTIMER, *Clerk.*

528 SWAYNE IMPEACHMENT PROCEEDINGS IN THE SENATE.

I, Charles Parlange, United States judge for the eastern district of Louisiana, do certify that Frank Hastings Mortimer, whose name is signed to the foregoing certificate as clerk of the district court for the eastern district of Louisiana, was, at the time of signing the same, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand at the city of New Orleans, in said district, this 8th day of February, A. D. 1905.

CHARLES PARLANGE,
United States Judge.

EXHIBIT I.

Certificate showing number of days court was opened in Pensacola and Tallahassee.

In the circuit court of the United States, northern district of Florida. At Pensacola.

HON. HENRY W. PALMER,
*Chairman of Managers of House of Representatives in Impeachment
Proceedings of Judge Charles Swayne, in Senate of United States.*

SIR: In compliance with your request, transmitted through Mr. B. S. Liddon, I have the honor to report that I have examined the records of said court and find from the minute books thereof that Judge Swayne attended and held court in Pensacola and Tallahassee on the following dates, a record of which will appear on the pages set opposite to the dates so given:

1894.

[After the passage of act of July 23, 1894,
when the district was changed.]

November 5, page 129, minute D.
November 7, page 132, minute D.
November 8, page 133, minute D.
November 9, page 137, minute D.
November 10, page 141, minute D.
November 12, page 144, minute D.
November 13, page 145, minute D.
November 14, page 146, minute D.
November 15, page 149, minute D.
November 16, page 153, minute D.
November 17, page 156, minute D.
November 19, page 160, minute D.
November 20, page 162, minute D.
November 21, page 163, minute D.
November 22, page 167, minute D.
November 23, page 176, minute D.
November 24, page 179, minute D.
November 26, page 187, minute D.
December 6, page 203, minute D.

1895.

February 6, page 207, minute D.
February 7, page 208, minute D.
March 4, page 209, minute D.
March 5, page 211, minute D.
March 6, page 213, minute D.
March 7, page 217, minute D.
March 8, page 220, minute D.
March 9, page 222, minute D.
March 11, page 223, minute D.
March 12, page 225, minute D.
March 13, page 232, minute D.
March 14, page 236, minute D.
March 15, page 240, minute D.

March 16, page 244, minute D.
March 18, page 250, minute D.
May 6, page 264, minute D.
May 7, page 267, minute D.
May 8, page 275, minute D.
May 9, page 280, minute D.
November 5, page 301, minute D.
November 6, page 304, minute D.
November 7, page 308, minute D.
November 8, page 312, minute D.
November 9, page 315, minute D.
November 11, page 324, minute D.
November 12, page 341, minute D.
November 13, page 350, minute D.
November 14, page 358, minute D.
November 15, page 364, minute D.
November 16, page 366, minute D.

1896.

January 18, page 452, minute D.
April 7, page 2, minute E.
April 8, page 17, minute E.
April 9, page 19, minute E.
April 10, page 22, minute E.
April 11, page 25, minute E.
April 13, page 32, minute E.
April 14, page 46, minute E.
April 15, page 57, minute E.
April 16, page 61, minute E.
April 17, page 64, minute E.
April 18, page 66, minute E.
April 20, page 73, minute E.
April 21, page 84, minute E.
April 22, page 91, minute E.
April 23, page 92, minute E.
April 24, page 97, minute E.
April 25, page 102, minute E.
June 29, page 141, minute E.
June 30, page 142, minute E.

July 1, page 142, minute E.
 November 4, page 147, minute E.
 November 5, page 152, minute E.
 November 6, page 154, minute E.
 November 7, page 167, minute E.
 November 9, page 175, minute E.
 November 10, page 186, minute E.
 November 11, page 189, minute E.
 November 12, page 197, minute E.
 November 13, page 201, minute E.

1897.

January 9, page 208, minute E.
 April 6, page 229, minute E.
 April 7, page 233, minute E.
 April 8, page 237, minute E.
 April 9, page 244, minute E.
 April 10, page 249, minute E.
 April 11, page 252, minute E.
 April 12, page 252, minute E.
 April 13, page 255, minute E.
 April 14, page 260, minute E.
 April 15, page 264, minute E.
 April 16, page 265, minute E.
 July 2, page 272, minute E.
 July 3, page 272, minute E.
 December 14, page 276, minute E.
 December 15, page 286, minute E.
 December 16, page 298, minute E.
 December 17, page 308, minute E.
 December 18, page 317, minute E.
 December 21, page 320, minute E.

1898.

May 28, page 350, minute E.
 May 30, page 351, minute E.
 May 31, page 351, minute E.
 June 1, page 353, minute E.
 June 2, page 356, minute E.
 June 3, page 356, minute E.
 June 4, page 357, minute E.
 November 15, page 363, minute E.
 November 16, page 365, minute E.
 November 17, page 365, minute E.
 November 18, page 366, minute E.
 November 19, page 366, minute E.
 December 7, page 368, minute E.
 December 8, page 368, minute E.
 December 9, page 368, minute E.
 December 10, page 368, minute E.
 December 12, page 369, minute E.
 December 13, page 370, minute E.
 December 14, page 371, minute E.
 December 15, page 371, minute E.
 December 16, page 372, minute E.
 December 17, page 372, minute E.

1899.

January 27, page 373, minute E.
 January 28, page 376, minute E.
 March 20, page 379, minute E.
 March 21, page 380, minute E.
 March 22, page 380, minute E.
 March 23, page 381, minute E.
 March 24, page 381, minute E.

March 25, page 381, minute E.
 May 1, page 383, minute E.
 May 2, page 385, minute E.
 May 3, page 387, minute E.
 May 4, page 396, minute E.
 May 5, page 397, minute E.
 May 6, page 398, minute E.
 May 15, page 400, minute E.
 May 16, page 400, minute E.
 May 17, page 400, minute E.
 May 18, page 400, minute E.
 May 19, page 400, minute E.
 May 20, page 400, minute E.
 October 5, page 7, minute F.
 October 6, page 8, minute F.
 November 6, page 10, minute F.
 November 7, page 10, minute F.
 November 8, page 11, minute F.
 November 9, page 11, minute F.
 November 10, page 11, minute F.
 November 11, page 11, minute F.
 November 13, page 11, minute F.
 November 14, page 13, minute F.
 November 15, page 13, minute F.
 November 16, page 14, minute F.
 November 17, page 15, minute F.
 November 18, page 15, minute F.
 November 27, page 16, minute F.
 November 28, page 16, minute F.
 November 29, page 17, minute F.
 November 30, page 17, minute F.
 December 1, page 17, minute F.
 December 2, page 18, minute F.

1900.

January 23, page 20, minute F.
 January 24, page 23, minute F.
 January 25, page 24, minute F.
 January 26, page 24, minute F.
 May 8, page 29, minute F.
 May 9, page 33, minute F.
 May 10, page 33, minute F.
 May 11, page 34, minute F.
 May 12, page 35, minute F.
 May 14, page 36, minute F.
 May 15, page 36, minute F.
 May 16, page 39, minute F.
 May 17, page 42, minute F.
 May 18, page 42, minute F.
 May 19, page 43, minute F.
 July 4, page 46, minute F.
 November 8, page 49, minute F.
 November 9, page 53, minute F.
 November 10, page 53, minute F.
 November 12, page 55, minute F.
 November 13, page 55, minute F.
 November 14, page 58, minute F.
 November 15, page 59, minute F.
 November 16, page 59, minute F.
 November 17, page 60, minute F.
 November 23, page 60, minute F.
 November 24, page 60, minute F.
 November 26, page 61, minute F.
 November 27, page 61, minute F.
 November 28, page 62, minute F.
 November 30, page 62, minute F.
 December 1, page 65, minute F.

1901.

January 2, page 67, minute F.
 January 3, page 68, minute F.
 January 4, page 68, minute F.
 January 22, page 68, minute F.
 January 23, page 68, minute F.
 January 24, page 68, minute F.
 January 25, page 69, minute F.
 January 26, page 70, minute F.
 January 30, page 70, minute F.
 February 6, page 70, minute F.
 February 7, page 70, minute F.
 February 13, page 71, minute F.
 February 14, page 72, minute F.
 February 20, page 72, minute F.
 February 27, page 72, minute F.
 February 28, page 73, minute F.
 March 1, page 73, minute F.
 March 2, page 74, minute F.
 March 4, page 75, minute F.
 March 5, page 75, minute F.
 March 6, page 76, minute F.
 March 7, page 77, minute F.
 March 8, page 77, minute F.
 March 9, page 78, minute F.
 March 11, page 78, minute F.
 March 12, page 79, minute F.
 March 13, page 79, minute F.
 March 14, page 80, minute F.
 March 18, page 80, minute F.
 March 20, page 80, minute F.
 March 25, page 81, minute F.
 March 27, page 81, minute F.
 March 30, page 81, minute F.
 April 1, page 82, minute F.
 April 2, page 82, minute F.
 April 3, page 82, minute F.
 April 4, page 82, minute F.
 April 6, page 83, minute F.
 April 26, page 85, minute F.
 April 27, page 86, minute F.
 April 29, page 86, minute F.
 April 30, page 88, minute F.
 May 1, page 90, minute F.
 May 2, page 91, minute F.
 May 3, page 92, minute F.
 May 4, page 92, minute F.
 May 5, page 93, minute F.
 May 6, page 94, minute F.
 May 7, page 96, minute F.
 May 8, page 97, minute F.
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 May 10, page 98, minute F.
 May 11, page 100, minute F.
 May 13, page 101, minute F.
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 May 16, page 101, minute F.
 May 17, page 101, minute F.
 May 18, page 101, minute F.
 May 22, page 102, minute F.
 May 23, page 102, minute F.
 May 24, page 102, minute F.
 May 25, page 102, minute F.
 May 27, page 102, minute F.
 May 28, page 103, minute F.
 May 29, page 103, minute F.
 May 30, page 103, minute F.

May 31, page 103, minute F.
 June 1, page 103, minute F.
 June 3, page 104, minute F.
 June 4, page 104, minute F.
 June 5, page 104, minute F.
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 June 10, page 104, minute F.
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 June 14, page 105, minute F.
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 June 17, page 105, minute F.
 June 18, page 105, minute F.
 June 19, page 107, minute F.
 November 4, page 107, minute F.
 November 5, page 107, minute F.
 November 6, page 109, minute F.
 November 7, page 109, minute F.
 November 8, page 109, minute F.
 November 9, page 109, minute F.
 November 11, page 110, minute F.
 November 12, page 111, minute F.
 November 13, page 113, minute F.
 November 14, page 113, minute F.
 November 15, page 113, minute F.
 November 16, page 113, minute F.
 November 23, page 114, minute F.
 November 24, page 114, minute F.
 November 25, page 114, minute F.
 November 26, page 114, minute F.
 November 27, page 114, minute F.
 November 29, page 114, minute F.
 November 30, page 114, minute F.
 December 3, page 115, minute F.
 December 9, page 115, minute F.
 December 10, page 115, minute F.
 December 11, page 115, minute F.
 December 12, page 116, minute F.
 December 13, page 116, minute F.
 December 14, page 116, minute F.
 December 16, page 116, minute F.
 December 17, page 116, minute F.
 December 18, page 116, minute F.
 December 19, page 116, minute F.
 December 20, page 117, minute F.
 December 21, page 117, minute F.
 December 23, page 117, minute F.
 December 24, page 117, minute F.
 December 26, page 117, minute F.
 December 27, page 117, minute F.
 December 28, page 118, minute F.
 December 30, page 118, minute F.
 December 31, page 118, minute F.

1902.

January 1, page 118, minute F.
 January 2, page 119, minute F.
 January 3, page 119, minute F.
 January 4, page 119, minute F.
 January 6, page 119, minute F.
 January 7, page 119, minute F.
 January 8, page 119, minute F.
 January 11, page 120, minute F.
 January 13, page 120, minute F.

January 14, page 120, minute F.
 January 15, page 120, minute F.
 January 16, page 120, minute F.
 January 17, page 120, minute F.
 January 18, page 120, minute F.
 January 20, page 120, minute F.
 January 21, page 121, minute F.
 January 22, page 121, minute F.
 January 23, page 121, minute F.
 January 24, page 121, minute F.
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 February 22, page 126, minute F.
 February 24, page 126, minute F.
 February 25, page 126, minute F.
 February 26, page 126, minute F.
 February 27, page 126, minute F.
 February 28, page 127, minute F.
 March 1, page 127, minute F.
 March 3, page 127, minute F.
 March 4, page 127, minute F.
 March 5, page 127, minute F.
 March 6, page 127, minute F.
 March 7, page 127, minute F.
 March 8, page 127, minute F.
 March 10, page 128, minute F.
 March 11, page 128, minute F.
 March 12, page 131, minute F.
 March 13, page 131, minute F.
 March 14, page 131, minute F.
 March 15, page 132, minute F.
 March 17, page 132, minute F.
 March 18, page 133, minute F.
 March 19, page 133, minute F.
 March 20, page 134, minute F.
 March 21, page 134, minute F.
 March 22, page 134, minute F.
 March 31, page 135, minute F.
 April 1, page 135, minute F.
 April 2, page 135, minute F.
 June 16, page 136, minute F.
 June 17, page 139, minute F.
 June 18, page 139, minute F.
 November 7, page 147, minute F.
 November 8, page 147, minute F.
 November 10, page 147, minute F.
 November 11, page 147, minute F.

November 12, page 151, minute F.
 November 13, page 151, minute F.
 November 14, page 152, minute F.
 November 15, page 152, minute F.
 November 17, page 152, minute F.
 November 18, page 152, minute F.
 November 19, page 153, minute F.
 November 20, page 153, minute F.
 November 21, page 155, minute F.
 November 22, page 155, minute F.
 November 24, page 155, minute F.
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 November 27, page 157, minute F.
 November 28, page 157, minute F.
 November 29, page 158, minute F.
 December 1, page 159, minute F.
 December 2, page 161, minute F.
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1903.

March 2, page 174, minute F.
 March 3, page 177, minute F.
 March 5, page 177, minute F.
 March 6, page 177, minute F.
 March 7, page 178, minute F.
 March 9, page 178, minute F.
 March 10, page 178, minute F.
 March 11, page 178, minute F.
 March 12, page 178, minute F.
 March 13, page 178, minute F.
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 April 15, page 181, minute F.
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 April 18, page 183, minute F.
 April 20, page 183, minute F.
 April 21, page 183, minute F.
 April 22, page 184, minute F.
 April 23, page 184, minute F.
 April 24, page 184, minute F.
 April 25, page 184, minute F.
 April 27, page 184, minute F.
 April 28, page 184, minute F.
 April 29, page 184, minute F.
 April 30, page 186, minute F.
 May 1, page 187, minute F.
 May 2, page 187, minute F.
 May 4, page 187, minute F.
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May 13, page 191, minute F.
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 May 25, page 192, minute F.
 May 26, page 192, minute F.
 May 27, page 192, minute F.
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 May 29, page 193, minute F.
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 June 1, page 193, minute F.
 October 2, page 200, minute F.
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 October 6, page 200, minute F.
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 October 13, page 202, minute F.
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 October 19, page 204, minute F.
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 October 22, page 204, minute F.
 October 23, page 205, minute F.
 October 24, page 205, minute F.
 October 26, page 205, minute F.
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 October 28, page 208, minute F.
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 October 30, page 208, minute F.
 October 31, page 208, minute F.
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 November 3, page 209, minute F.
 November 4, page 211, minute F.
 November 5, page 212, minute F.
 November 6, page 212, minute F.
 November 7, page 213, minute F.
 November 9, page 213, minute F.
 November 10, page 216, minute F.
 November 11, page 217, minute F.
 November 12, page 217, minute F.
 November 13, page 217, minute F.
 November 14, page 218, minute F.
 November 16, page 218, minute F.
 November 17, page 218, minute F.
 November 18, page 218, minute F.
 November 19, page 218, minute F.
 November 20, page 218, minute F.
 November 21, page 218, minute F.
 November 30, page 218, minute F.
 December 1, page 219, minute F.
 December 2, page 219, minute F.
 December 3, page 219, minute F.
 December 4, page 219, minute F.
 December 5, page 219, minute F.
 December 7, page 219, minute F.
 December 8, page 219, minute F.
 December 9, page 220, minute F.
 December 10, page 220, minute F.
 December 11, page 220, minute F.
 December 12, page 220, minute F.
 December 14, page 221, minute F.
 December 15, page 221, minute F.
 December 16, page 221, minute F.
 December 17, page 221, minute F.

December 18, page 221, minute F.
 December 19, page 221, minute F.
 December 21, page 221, minute F.
 December 22, page 221, minute F.
 December 23, page 222, minute F.
 December 24, page 222, minute F.
 December 26, page 222, minute F.
 December 28, page 222, minute F.
 December 29, page 222, minute F.
 December 31, page 222, minute F.

AT TALLAHASSEE.

1894.

December 4, page 191, old minute book.

1895.

January 18, page 202, old minute book.
 January 19, page 209, old minute book.
 February 4, page 209, old minute book.
 February 5, page 220, old minute book.
 April 16, page 223, old minute book.
 April 17, page 223, old minute book.
 April 18, page 226, old minute book.
 July 16, page 233, old minute book.

1896.

The May term of 1896 was held by Judge Locke.

1896.

November 2, page 60, minute book.

1897.

January 9, page 60, minute book.

1898.

June 6, page 78, minute book.
 June 7, page 82, minute book.
 June 8, page 91, minute book.

1899.

May 9, page 105, minute book.
 May 10, page 107, minute book.
 May 11, page 109, minute book.
 May 12, page 109, minute book.
 May 13, page 110, minute book.
 November 20, page 110, minute book.
 November 21, page 110, minute book.
 November 22, page 113, minute book.
 November 23, page 116, minute book.
 November 24, page 117, minute book.
 December 4, page 117, minute book.
 December 5, page 119, minute book.

1900.

May 22, page 124, minute book.
 May 23, page 126, minute book.
 November 19, page 128, minute book.
 November 20, page 129, minute book.
 November 21, page 130, minute book.
 November 22, page 132, minute book.

1901.

November 18, page 134, minute book.
November 19, page 135, minute book.
November 20, page 136, minute book.
November 21, page 137, minute book.
November 22, page 138, minute book.

1902.

March 24, page 141, minute book.
March 25, page 142, minute book.
March 26, page 143, minute book.
March 27, page 144, minute book.

1903.

May 18, page 155, minute book.
May 19, page 156, minute book.
May 20, page 156, minute book.
May 21, page 157, minute book.
May 22, page 157, minute book.
May 23, page 158, minute book.
November 23, page 169, minute book.
November 24, page 169, minute book.
November 25, page 171, minute book.
November 26, page 171, minute book.
November 27, page 172, minute book.
November 28, page 172, minute book.

STATE OF FLORIDA, *County of Escambia*, ss:

I, Frederick W. Marsh, clerk of the circuit court of the United States in and for the northern district of Florida and the fifth judicial circuit, hereby certify that the foregoing is a true and correct copy of certain dates in which court was held, the judge present and presiding, at Pensacola and Tallahassee, Fla., for the different years as set forth, with the page upon which the entry is to be found, together with the number of the minute book wherein the same is of record.

In witness whereof I have hereunto set my hand and the seal of said court, at the city of Pensacola, in said district, this 3d day of February, A. D. 1905.

[SEAL.]

F. W. MARSH, *Clerk*.

District court of the United States, northern district of Florida.

Dates on which the district court was opened and the judge present and presiding, in addition to those already given for the circuit court, on which dates the judge was present and presiding in both courts:

1894.

December 5, page 52, old minute book.

1895.

October 15, page 78, old minute book.
October 16, page 84, old minute book.
October 17, page 89, old minute book.

1896.

January 17, page 105, old minute book.

1898.

January 14, page 67, new minute book.
January 15, page 70, new minute book.
April 5, page 76, new minute book.
November 12, page 110, new minute book.
November 14, page 119, new minute book.

1899.

November 25, page 198, new minute book.

1900.

May 4, page 226, new minute book.
May 5, page 227, new minute book.
May 7, page 236, new minute book.
July 4, page 250, new minute book.
October 3, page 263, new minute book.

1901.

February 25, page 301, new minute book.
March 22, page 308, new minute book.
May 14, page 330, new minute book.
May 20, page 332, new minute book.
May 21, page 332, new minute book.
June 20, page 339, new minute book.
June 21, page 339, new minute book.
June 22, page 339, new minute book.
June 24, page 340, new minute book.
June 25, page 340, new minute book.
June 26, page 341, new minute book.
June 27, page 341, new minute book.
June 28, page 341, new minute book.
June 29, page 342, new minute book.
December 2, page 366, new minute book.

1902.

February 4, page 390, new minute book.
March 28, page 409, new minute book.
March 29, page 409, new minute book.
November 6, page 435, new minute book.

1903.

September 30, page 529, new minute book.
October 17, page 546, new minute book.
December 30, page 568, new minute book.

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UNITED STATES OF AMERICA,

Northern District of Florida:

I, F. W. Marsh, clerk of the district court of the United States in and for the northern district of Florida, hereby certify that the foregoing is a true and correct copy from the records of this court as the same remains of file and record in said court.

In testimony whereof I have hereunto set my hand and the seal of the said court at the city of Pensacola, in said district, this — day of February, A. D. 1905.

[SEAL.]

_____, Clerk.

[From the minutes of the United States circuit court for the northern district of Texas, at Dallas. Vol. 7, page 153.]

DALLAS, TEX., January 11, 1897.

Be it remembered that on this the 11th day of February, 1897, the same being the second Monday of said month, the circuit court of the United States in the fifth circuit thereof, in and for the northern district of Texas, met at Dallas, Tex., pursuant to law.

Present: Hon. Charles Swayne, United States district judge for the northern district of Florida, presiding by regular designation and appointment; W. O. Hamilton, United States attorney; R. M. Love, marshal, and J. H. Finks, clerk, by his deputy, Charles H. Lednum, when and where the following proceedings were had and done, to wit:

I, J. H. Finks, clerk of the United States circuit court, fifth circuit and northern district of Texas, do hereby certify that the records of the said court at Dallas, Tex., show the foregoing order opening court on January 11, 1897.

In testimony whereof witness my hand officially and the seal of the United States circuit court at Dallas, Tex., this, the 7th day of February, A. D. 1905.

[SEAL.]

J. H. FINKS,
Clerk United States Circuit Court.

MR. THURSTON. For the convenience of the court and notification to the managers as to what we claim these certificates show, I will ask to have printed in the record a list compiled by us from the certificates showing the various dates in a brief and concise form in the nature of a calendar, and also showing our computations of the number of days covered by them.

MR. MANAGER PALMER. To that we object.

MR. THURSTON. I offer that not as evidence, but as part of our argument, and under the rule adopted this morning.

MR. MANAGER PALMER. Mr. President, I submit that the certificates when printed will show what they contain, and their computation is what we object to.

THE PRESIDING OFFICER. That is a part of the argument, and the Presiding Officer thinks should be withheld until the argument is commenced.

MR. THURSTON. If that is their objection, we withhold it.

MR. PRESIDENT, I ask to have printed in the record the act of Congress approved July 23, 1894, and found at page 117 of volume 28, United States Statutes at Large, being the act which changed the boundary of the northern district of Florida.

THE PRESIDING OFFICER. Does the counsel desire to have it read by the Secretary?

MR. THURSTON. I do not desire to have it read.

THE PRESIDING OFFICER. It will be placed in the record without reading.

The act referred to is as follows:

CHAP. 149.—*An act to change the boundaries of the judicial districts of the State of Florida.*

Be it enacted, etc., That the following counties of the State of Florida, to wit: Alachua, Baker, Bradford, Brevard, Clay, Columbia, Dade, Duval, Hamilton, Lake, Madison, Marion, Nassau, Orange, Osceola, Putnam, St. John, Sumter, Suwannee, and Volusia, be, and the same are hereby, detached from the northern judicial district of said State and attached to the southern judicial district thereof.

SEC. 2. That terms of the district and circuit courts for said southern district shall be held at Jacksonville, Fla., beginning on the first Monday of December of each year, in addition to the times at Key West and Tampa, as now provided by law.

SEC. 3. *And be it further enacted,* That all cases or proceedings pending in the circuit court for the northern district of Florida at Jacksonville, Fla., or filed in the office of the clerk of said circuit court at Jacksonville aforesaid, and all records of said court at Jacksonville aforesaid, are hereby transferred to said circuit court for the southern district of Florida, to be proceeded with therein as if originally instituted in said court. And all cases or proceedings pending in the district court for the northern district of Florida at Jacksonville, Fla., or filed in the office of the clerk of said district court at Jacksonville aforesaid, and all records of said court at Jacksonville aforesaid, are hereby transferred to said district court for the southern district of Florida, to be proceeded with therein as if originally instituted in said court.

Approved, July 23, 1894.

Mr. THURSTON. I also ask to have printed in the Record the various provisions from the statutes enacted by Congress providing for the compensation of circuit and district judges while attending court outside of their own districts. I have prepared this from the various appropriation acts of Congress, and I ask that it be printed in the Record.

Mr. Manager OLMSTED. Let us see what it is. [The paper was handed to Mr. Manager Olmsted.]

Mr. THURSTON. I have prepared those relating to the district judges in the inverse order of their enactment, and I ask that they go into the record in that order—that is, commencing with the last appropriation act and running backwards.

Mr. Manager OLMSTED. I presume they are all right.

The PRESIDING OFFICER. If there is no objection, the paper referred to by counsel for the respondent will be placed in the record.

The paper referred to is as follows:

[Circuit court of appeals, act of March 3, 1891 (26 Stats., 828).]

SEC. 8. That any justice or judge who, in pursuance of the provisions of this act, shall attend the circuit court of appeals held at any place other than where he resides, shall, upon his written certificate, be paid by the marshal of the district in which the court shall be held his reasonable expenses for travel and attendance, not to exceed \$10 per day, and such payments shall be allowed the marshal in the settlement of his accounts with the United States.

[Sundry civil appropriation bill, April 28, 1904 (Stats., p. 508).]

Appropriation of \$165,000, among other things, for payment "of reasonable expenses for travel and attendance of district judges directed to hold court outside of their districts, not to exceed \$10 per day each, to be paid on written certificates of the judges, and such payments shall be allowed the marshal in the settlement of his accounts with the United States; expenses of judges of the circuit courts of appeals not to exceed \$10 per day."

[Sundry civil appropriation bill, March 3, 1903 (Stats., p. 1141).]

Appropriation of \$160,000, among other things, for payment "of reasonable expenses for travel and attendance of district judges directed to hold court outside of their districts, not to exceed \$10 per day each, to be paid on written certificates of the

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judges, and such payments shall be allowed the marshal in the settlement of his accounts with the United States; expenses of judges of the circuit courts of appeals not to exceed \$10 per day."

[Sundry civil appropriation bill, June 28, 1902 (Stats., p. 476).]

Appropriation of \$160,000, among other things, for payment "of reasonable expenses for travel and attendance of district judges directed to hold court outside of their districts, not to exceed \$10 per day each, to be paid on written certificates of the judges, and such payments shall be allowed the marshal in the settlement of his accounts with the United States; expenses of judges of the circuit courts of appeals not to exceed \$10 per day."

[Sundry civil appropriation bill, March 3, 1901 (Stats., p. 1183).]

Appropriation of \$160,000, among other things, for payment "of reasonable expenses for travel and attendance of district judges directed to hold court outside of their districts, not to exceed \$10 per day each, to be paid on written certificates of the judges, and such payments shall be allowed the marshal in the settlement of his accounts with the United States; expenses of judges of the circuit courts of appeals."

[Deficiency appropriation bill, March 3, 1901 (Stats., p. 1047).]

Appropriation of \$12,000, among other things, for payment "of reasonable expenses for travel and attendance of district judges directed to hold court outside of their districts, not to exceed \$10 per day each, to be paid on written certificates of the judges, and such payments shall be allowed the marshal in the settlement of his accounts with the United States; expenses of judges of the circuit courts of appeals."

[Sundry civil appropriation bill, June 6, 1900 (Stats., p. 641).]

Appropriation of \$150,000, among other things, for payment "of reasonable expenses for travel and attendance of district judges directed to hold court outside of their districts, not to exceed \$10 per day each, to be paid on written certificates of the judges, and such payments shall be allowed the marshal in the settlement of his accounts with the United States; expenses of judges of the circuit courts of appeals."

[Sundry civil appropriation bill, March 3, 1899 (Stats., p. 1116).]

Appropriation of \$150,000, among other things, for payment "of reasonable expenses for travel and attendance of district judges directed to hold court outside of their districts, not to exceed \$10 per day each, to be paid on written certificates of the judges, and such payments shall be allowed the marshal in the settlement of his accounts with the United States; expenses of judges of the circuit courts of appeals."

[Sundry civil appropriation bill, July 1, 1898 (Stats., p. 644).]

Appropriation of \$150,000, among other things, for payment "of reasonable expenses for travel and attendance of district judges directed to hold court outside of their districts, not to exceed \$10 per day each, to be paid on written certificates of the judges, and such payments shall be allowed the marshal in the settlement of his accounts with the United States; expenses of judges of the circuit courts of appeals."

[Sundry civil appropriation bill, June 4, 1897 (Stats., p. 58).]

Appropriation of \$150,000, among other things, for payment "of reasonable expenses for travel and attendance of district judges directed to hold court outside of their districts, not to exceed \$10 per day each, to be paid on written certificates of the judges, and such payments shall be allowed the marshal in the settlement of his accounts with the United States; expenses of judges of the circuit courts of appeals."

[Sundry civil appropriation bill, June 11, 1896 (Stat. L., p. 451).]

Appropriation of \$110,000, among other things, for payment "of reasonable expenses for travel and attendance of district judges directed to hold court outside of their districts, not to exceed \$10 per day each, to be paid on written certificates of the judges, and such payments shall be allowed the marshal in the settlement of his accounts with the United States; expenses of judges of the circuit courts of appeals."

[Deficiency appropriation bill, June 8, 1896 (Stat. L., 398).]

Appropriation of \$10,000, among other things, for payment "of expenses of district judges directed to hold court outside of their districts and judges of the circuit courts of appeals."

[Sundry civil appropriation bill, March 2, 1895 (Stat. L., p. 958).]

Appropriation of \$150,000, among other things, for payment "of expenses of district judges directed to hold court outside of their districts and judges of the circuit courts of appeals."

[Sundry civil appropriation bill, August 18, 1894 (Stats., p. 417).]

Appropriation of \$150,000, among other things, for payment "of expenses of district judges directed to hold court outside of their districts and judges of the circuit courts of appeals."

[Sundry civil appropriation bill, March 3, 1893 (Stats., p. 609).]

Appropriation of \$150,000, among other things, for payment "of expenses of district judges directed to hold court outside of their districts and judges of the circuit courts of appeals."

[Sundry civil appropriation bill, August 5, 1892 (Stats., p. 386).]

Appropriation of \$135,600, among other things, for payment "of expenses of district judges directed to hold court outside of their districts."

Mr. THURSTON. I also ask to have incorporated and printed in the record certain short provisions of the act of July 31, 1894, being those provisions of the act relating to the duties of the Comptroller and other accounting officers of the Government in passing upon accounts such as are involved in this proceeding.

The PRESIDING OFFICER. Is there objection on the part of the managers?

Mr. Manager OLMSTED. This does not seem to be the statute, but somebody's digest.

Mr. HIGGINS. That is only a memorandum of the sections.

Mr. Manager OLMSTED. I would rather have the language of the act go in.

Mr. HIGGINS. Of course.

Mr. THURSTON. I thought it had been copied.

Mr. HIGGINS. No; it has not.

Mr. THURSTON. I offer the first line of section 7, which reads as follows.

The PRESIDING OFFICER. What is the volume?

Mr. THURSTON. Volume 28 of the Statutes at Large, page 206. It reads:

Accounts shall be examined by the auditors as follows:

Then I offer—

Mr. Manager SMITH. Is that all you offer?

Mr. THURSTON. No. Then I ask to have printed, following that, the fifth paragraph of section 7.

Mr. Manager OLMSTED. Pardon me if I look over it with you.

Mr. THURSTON. Certainly. Following that, I wish to offer the fifth paragraph of section 7, found on page 207; following that, the first paragraph of section 8, found upon the same page; then that clause of section 8 found on page 208, beginning with the words "all decisions by Auditors," etc.; also section 13 of said act, on page 210.

The matter referred to is as follows:

Fifth. The Auditor for the State and other Departments shall receive and examine all accounts of salaries and incidental expenses of the offices of the Secretary of State, the Attorney-General, and the Secretary of Agriculture, and of all bureaus and offices under their direction; all accounts relating to all other business within the jurisdiction of the Departments of State, Justice, and Agriculture; all accounts relating to the diplomatic and consular service, the judiciary, United States courts, judgments of United States courts, Executive Office, Civil Service Commission, Interstate Commerce Commission, Department of Labor, District of Columbia, Fish Commission, Court of Claims and its judgments, Smithsonian Institution, Territorial governments, the Senate, the House of Representatives, the Public Printer, Library of Congress, Botanic Garden, and accounts of all boards, commissions, and establishments of the Government not within the jurisdiction of any of the Executive Departments. He shall certify the balances arising thereon to the division of bookkeeping and warrants, and send forthwith a copy of each certificate, according to the character of the account, to the Secretary of the Senate, Clerk of the House of Representatives, Sergeant-at-Arms of the House of Representatives, or the chief officer of the Executive Department, commission, board, or establishment concerned.

* * * * *

SEC. 8. The balances which may from time to time be certified by the Auditors to the Division of Bookkeeping and Warrants, or to the Postmaster-General, upon the settlements of public accounts, shall be final and conclusive upon the executive branch of the Government, except that any person whose accounts may have been settled, the head of the Executive Department, or of the board, commission, or establishment not under the jurisdiction of an Executive Department, to which the account pertains, or the Comptroller of the Treasury, may, within a year, obtain a revision of the said account by the Comptroller of the Treasury, whose decision upon such revision shall be final and conclusive upon the executive branch of the Government: *Provided*, That the Secretary of the Treasury may, when in his judgment the interests of the Government require it, suspend payment and direct the reexamination of any account.

* * * * *

All decisions by Auditors making an original construction or modifying an existing construction of statutes shall be forthwith reported to the Comptroller of the Treasury, and items in any account affected by such decisions shall be suspended and payment thereof withheld until the Comptroller of the Treasury shall approve, disapprove, or modify such decisions and certify his actions to the Auditor. All decisions made by the Comptroller of the Treasury under this act shall be forthwith transmitted to the Auditor or Auditors whose duties are affected thereby.

* * * * *

SEC. 13. Before transmission to the Department of the Treasury the accounts of district attorneys, assistant attorneys, marshals, commissioners, clerks, and other officers of the courts of the United States, except consular courts, made out and approved as required by law, and accounts relating to prisoners convicted or held for trial in any court of the United States, and all other accounts relating to the business of the Department of Justice or of the courts of the United States other than consular courts, shall be sent with their vouchers to the Attorney-General and examined under his supervision.

Judges receiving salaries from the Treasury of the United States shall be paid monthly by the disbursing officer of the Department of Justice, and to him all certificates of nonabsence or of the cause of absence of judges in the Territories shall be sent. Interstate Commerce Commissioners and other officers, now paid as judges are, shall be paid monthly by the proper disbursing officer or officers.

MR. THURSTON. I also ask to have incorporated and put into the Record the first paragraph of section 1 of the act of February 22, 1875, entitled "An act regulating fees and costs, and for other purposes."

THE PRESIDING OFFICER. What volume?

MR. HIGGINS. The first volume of the Supplement to the Revised Statutes of the United States.

THE PRESIDING OFFICER. In the absence of objection, the matter referred to will be inserted in the Record.

The matter referred to is as follows:

[SECTION 1.] That before any bill of costs shall be taxed by any judge or other officer, or any account payable out of the money of the United States shall be allowed by any officer of the Treasury, in favor of clerks, marshals, or district attorneys, the party claiming such account shall render the same, with the vouchers and items thereof, to a United States circuit or district court, and in presence of the district attorney or his sworn assistant, whose presence shall be noted on the record, prove in open court, to the satisfaction of the court, by his own oath or that of other persons having knowledge of the facts, to be attached to such account, that the services therein charged have been actually and necessarily performed as therein stated; and that the disbursements charged have been fully paid in lawful money; and the court shall thereupon cause to be entered of record an order approving or disapproving the account, as may be according to law, and just.

Mr. THURSTON. I also ask to have incorporated in the Record those portions of the official debates of Congress, first, found in volume 28, part 5, Fifty-fourth Congress, first session, being a part of the proceedings of the Senate of April 24, 1896; second, the proceedings of the House of Representatives found in the Congressional Record, volume 31, part 3, Fifty-fifth Congress, first session, being a part of the proceedings of that House of February 28, 1898; third, that part of the proceedings of the House of Representatives found in the Congressional Record, Fifty-seventh Congress, second session, volume 36, part 2, being a part of the proceedings of the House of Representatives of January 27, 1903.

These are the debates on three separate occasions when the provisions of law relating to the payment of expenses for travel and attendance of judges holding court outside of their districts were under consideration. We offer it as a part of the parliamentary history of the enactment of these laws and as having some bearing upon their construction.

The PRESIDING OFFICER. Is there any objection to that?

Mr. Manager OLMSTED. Is the honorable counsel through with his offer?

Mr. THURSTON. Yes, sir.

Mr. HIGGINS. As to that part of it; but we have another statute here to which you will not object.

Mr. Manager OLMSTED. You desire to put it in ahead of this, do you?

Mr. HIGGINS. Yes.

Mr. THURSTON. In advance of the offer—which I desire and withhold for the moment—I ask to have incorporated and printed in the record certain portions of the United States Statutes, volume 30, page 544, which I now present, being a part of the act to establish a uniform system of bankruptcy, etc.

Mr. HIGGINS. It is the Greenhut case.

Mr. THURSTON. It is the O'Neal case. The question raised in that case was whether or not the officer at that time was an officer in the discharge of his duty.

Mr. Manager PALMER. We shall not object.

The PRESIDING OFFICER. Is there objection?

Mr. Manager PALMER. No, sir.

The PRESIDING OFFICER. The matter referred to will be inserted in the record.

The matter referred to is as follows:

[United States Statutes, vol. 30, p. 544. July 1, 1898.]

CHAP. 541.—*An act to establish a uniform system of bankruptcy throughout the United States.*

CHAPTER I.—DEFINITIONS.

SECTION 1. *Meaning of words and phrases.*— * * * "Officer" shall include clerk, marshal, receiver, referee, and trustee, and the imposing of a duty upon or the forbidding of an act by any officer shall include his successor and any person authorized by law to perform the duties of such officer. * * *

[Chapter II, pp. 545–546.]

SEC. 2. *Creation of courts of bankruptcy and their jurisdictions.*— * * * (4) Arraign, try, and punish bankrupts, officers and other persons, and the agents, officers, members of the board of directors or trustees, or other similar controlling bodies, of corporations for violations of this act, in accordance with the laws of procedure of the United States now in force, or such as may be hereafter enacted, regulating trials for the alleged violation of laws of the United States; * * * (7) cause the estates of bankrupts to be collected, reduced to money, and distributed; * * * (13) enforce obedience by bankrupts, officers, and other persons to all lawful orders, by fine or imprisonment or fine and imprisonment; (14) extradite bankrupts from their respective districts to other districts; (15) make such orders, issue such process, and enter such judgments in addition to those specifically provided for as may be necessary for the enforcement of the provisions of this act; (16) punish persons for contempts committed before referees; * * *

[Chapter 541, page 556.]

SEC. 41. *Contempts before referee.*—A person shall not, in proceedings before a referee, (1) disobey or resist any lawful order, process, or writ, (2), misbehave during a hearing or so near the place thereof as to obstruct the same, (3) neglect to produce, after having been ordered to do so, any person or document, or (4) refuse to appear after having been subpoenaed, or, upon appearing, refuse to take the oath as a witness, or, after having taken the oath, refuse to be examined according to the law. * * * The referee shall certify the facts to the judge if any person shall do any of the things forbidden in this section. The judge shall thereupon, in summary manner, hear the evidence as to the acts complained of, and, if it is such as to warrant him in so doing, punish such person in the same manner and to the same extent as for a contempt committed before the court of bankruptcy or commit such person upon the same condition as if the doing of the forbidden act had occurred with reference to process of, or in the presence of, the court.

[Page 557.]

SEC. 47. *Duties of trustees.*—Trustees shall * * * (2) collect and reduce to money the property of the estates for which they are trustees, under the direction of the court, and close up the estate as expeditiously as is compatible with the best interests of the parties in interest.

Mr. Manager OLMSTED. Mr. President, the honorable counsel for the respondent offers certain extracts from the Congressional Record purporting to contain some portions of the debates at various times upon provisions of pending bills, which subsequently became statutes, relating to the payment of expenses of district judges for the purpose, as he states, of construing those acts of Congress.

To that we object, first, that it is not competent nor proper in the construction of a statute to consider the debates in Congress; and, second, that if admitted, it would require us in rebuttal to produce all the other portions of the debates, and then to call all those members of Congress who are not present to ascertain their views upon the construction of the statute for which they then voted. Upon that I

will take a very few minutes to refer the Presiding Officer and the Senate to what seems to me to be an entirely conclusive authority upon the subject.

It was decided in the *United States v. Freight Association* (166 U. S., p. 260), as stated in the syllabus:

Debates in Congress are not appropriate sources of information from which to discover the meaning of the language of a statute passed by that body.

Mr. Justice Peckham delivered the opinion of the court. On page 318 he said:

Looking simply at the history of the bill from the time it was introduced in the Senate until it was finally passed, it would be impossible to say what were the views of a majority of the members of each House in relation to the meaning of the act. It can not be said that a majority of both Houses did not agree with Senator Hoar in his views as to the construction to be given to the act as it passed the Senate. All that can be determined from the debates and reports is that various members had various views, and we are left to determine the meaning of this act, as we determine the meaning of other acts, from the language used therein.

There is, too, a general acquiescence in the doctrine that debates in Congress are not appropriate sources of information from which to discover the meaning of the language of a statute passed by that body. (*United States v. Union Pacific R. R. Co.*, 91 U. S., 72; *Aldridge v. Williams*, 3 How., 9, Taney, Chief Justice; *Mitchell v. Great Works Milling and Manufacturing Co.*, 2 Story, 648; *Queen v. Hertford College*, 3 Q. B. D., 693.)

The reason is that it is impossible to determine with certainty what construction was put upon an act by the members of a legislative body that passed it by resorting to the speeches of individual members thereof. Those who did not speak may not have agreed with those who did, and those who spoke might differ from each other, the result being that the only proper way to construe a legislative act is from the language used in the act, and, upon occasion, by a resort to the history of the times when it passed.

Mr. HIGGINS. What volume is that?

Mr. Manager OLMSTED. Judge Peckham's opinion is in 166 U. S., page 290.

Mr. HIGGINS. What is the name of the case?

Mr. Manager OLMSTED. The *United States v. Freight Association*.

Now, Mr. President, you will readily see from the few disjointed remarks in the body at the other end of the building, the bill coming before it for the first time, one member taking an offhand view of a paragraph and saying so and so, and another saying something else, and the great body who vote for it saying nothing, it is improper—and the Supreme Court has so held, and so have the courts of England—that it is absolutely improper to look into the debates for the purpose of construing an act of assembly. You will see at once that in order to do full justice to the subject it would be necessary to call all those members who did not vote and ascertain their views; which would amount to taking a new vote in the House of Representatives to determine upon the construction of an act of assembly, the construction of which is proper matter for the courts, and in this instance for the Senate sitting as a court.

Mr. THURSTON. Mr. President, I do not rise for the purpose of discussing the law myself, but in order to advise the court that I am offering here, not merely debates in Congress of what was said, but actions that were taken in connection with these statutes, amendments that were offered and rejected. I am offering the proceedings. They directly bear upon the construction of this act, and I have a right to refer to the Congressional Record in the debates, at least; for instance,

Mr. Allen, in the Senate, when this provision was under consideration, offered the following—

Mr. Manager OLMSTED. I object to the gentleman putting in an argument the evidence to which we object. I understand he was about to read from the debates.

Mr. THURSTON. I am, certainly.

Mr. Manager OLMSTED. Well, I would ask that the honorable counsel wait until the question of the admissibility of the evidence has been determined.

Mr. THURSTON. Certainly, if you deny that in an argument I have not a right to read from the proceedings of Congress. I should like to have that determined before I make any argument.

Mr. Manager OLMSTED. With the permission of the honorable counsel, I do insist that it is not proper, in arguing a case, not only before a court, but before a jury, to put in evidence in that way, and put in the record the very matter the admissibility of which is now before the court. That is precisely what counsel objected to when Mr. Manager Palmer offered to prove an admission that the respondent had made before the committee of the House. They were on their feet before the paper got halfway to the clerk's desk, and contended that it was a monstrous outrage even to suggest its reading to the Senate until the objection had been disposed of; and I do not know of any reason why the same rule which they invoked successfully should not be applied to them.

The PRESIDING OFFICER. The Presiding Officer thinks that counsel can make the argument that he desires to make without reading the Congressional debates. He desires to show the nature of the evidence which he proposes to introduce by introducing these debates. They are something more than debates. They are action upon amendments and various motions that were made. The Presiding Officer thinks that that can be done without any actual reading of the debates. There can be statements by counsel as to the particular matter to which he wishes to call the attention of the Senate without reading the debates.

Mr. THURSTON. Mr. President, in the line of the suggestion you have made I will in a very few words state what we offer to prove.

We offer to prove that on April 24, 1896, when this provision was before the Senate of the United States, the meaning of the clause was discussed on the floor of the Senate, and growing out of that discussion, and for the avowed purpose of making its meaning explicit, an amendment was attached to the clause in the Senate declaring, in substance, that nothing but actual expenses or moneys actually expended should be allowed the judges. That amendment was put on in the Senate. It went to conference and was rejected by the conference report, thereby, as we claim, determining that it was not the sense of the Congress of the United States that this allowance should be of moneys actually expended by the judges.

We further claim that in the proceedings of the House of Representatives, while a similar provision was under consideration on January 27, 1903, an amendment was offered, the purport of which was to prohibit the allowance to these judges of any traveling expenses where they had not actually made the expenditure of money; in other words, to prohibit them from certifying under the law to their traveling expenses when they had been riding free; and that amendment, made

for that specific purpose, was rejected by the House, thereby showing, as we contend, the clear intention of Congress to allow the judges to certify and receive necessary or reasonable traveling expenses whether they paid the money out or not.

We further propose to show that in the House of Representatives on January 27, 1903, while a similar provision was under consideration—

Mr. Manager OLMSTED. What year?

Mr. THURSTON. 1903. That the House of Representatives on the date I have last named, in further consideration of this appropriation, took proceedings whereby an amendment was offered to prevent the judges of the courts of the United States from receiving free railroad transportation, which amendment by the House of Representatives was rejected, thereby attesting, as we believe, the opinion or construction of the House of Representatives that the provision of the law permitted judges to receive from the Treasury of the United States reasonable traveling expenses whether they paid their fare or rode free.

My associate desires to reply to the law that has just been presented.

Mr. HIGGINS. Mr. President, in the first place, there are two classes of legislative proceedings incorporated in this offer, as I understand. The one referred to by my colleague in the beginning of his remarks on this offer is where we offered to show the parliamentary history of the clause in the act of June 11, 1896, which is an offer to show an amendment proposed by a Senator, and the adoption thereof in the Senate, and afterwards a conference report in which the amendment adopted by the Senate was stricken out and a substitute for the same enacted; and in that shape the act of 1896 became a law.

Now, quite apart from the question of the admissibility of debates as to the construction of a statute is the principle that applies on this offer, for I find it laid down by the Supreme Court in the case of the *United States v. Johnson* (124 U. S., 237-253), which supports this proposition:

In like manner cogent and persuasive is the construction placed by either or both of the two Houses of Congress, by legislation and in debate, upon the statute.

The syllabus of that case is as follows:

The joint resolution of Congress of March 31, 1868 (5 Stat., 251), affords evidence that the practice of the Secretary of the Treasury prior to that date not to cover into the Treasury the sums received from the sale of captured and abandoned property, but to retain them in the hands of the Treasurer in order to pay them out from time to time on the order of the Secretary, was known to Congress and was acquiesced in by it, as to what had been previously done; and all this brings the practice within the well-settled rule that the contemporaneous construction of a statute by those charged with its execution, especially when it has long prevailed, is entitled to great weight, and should not be disregarded or overturned except for cogent reasons, and unless it be clear that such construction is erroneous.

In other words, Mr. President, those legislative proceedings will make plain that the construction by a Senator upon the act of Congress under which district and circuit judges are paid when absent from their homes in the one case or their districts in the other holding court—that the construction which the learned managers place upon that act was the one which was sought by a Senator in that debate to place upon that statute in express words, and the Senate passed the amendment, and the conference committee struck it out.

The Senate amendment, which was virtually a proviso that no expenses should be certified other than those that were actually incurred, was stricken out, and in place of it the last section of the act of 1891, creating the circuit court of appeals, was substituted for it, which said that when these sums were paid to the judge by the marshal they should be allowed to the marshal in his accounts. That clearly comes within the case of *The United States v. Johnson* and of the acquiescence by Congress. It is a much stronger case; it is more than an acquiescence by Congress in the construction, for it is by legislation making the statute in terms to be what excludes the construction that was sought to be put on it by a specific amendment to that effect.

That is a different thing from the mere opinions that are expressed by members of either House of Congress at the time when a bill is in consideration before it; it is a part of the legislative history of the act, the amendment adopted by the Senate and its being stricken out in conference, and another feature added to the law in substitution for it being a part of our offer in what we seek to prove.

Now, Mr. President, I submit to the Senate that the principle which has been adduced in the case of the *United States v. Freight Association* (166 U. S.) is not applicable to the case that is now before the Senate. It is not simply and merely a question as to what is the construction that would be put upon the act in question by a court; it is not a question as to the construction that will be put upon it by any member of this tribunal. The question we respectfully submit, is whether or no this statute admits of a doubtful construction and is open to more than one opinion.

If a statute is ambiguous, if it has been loosely drawn, if it is not clearly and without any uncertainty of one construction, and therefore not open to construction, then we have authority as old as Judge Story, and coming from authority as high as his, that in a case involving the accounts of an officer under such a statute any doubts are to be resolved in favor of the officer; and by a line of authority in the Supreme Court of the United States, followed frequently and numerously in the circuit courts and in the Supreme Court of the United States, we have a long line of authority that where a statute is in the least degree open to construction, and in many cases, Mr. President, where it has not been open to construction, a long-continued construction of it by the executive officers of the Government has been held to be cogent, to be persuasive, to be decisive.

I had not expected to go into the presentation of that line of authority on this particular question—the question as to whether or no you would admit debates in Congress. Those debates, Mr. President, under the principle which I have now ventured to enunciate—and I do not suppose it will be disputed—go to the point that if the Congress itself in the debates placed a different construction upon this act from what the learned managers place upon it, there could be no crime in this respondent in placing a like construction upon it; that what here was said, and in another body in debate, as to what was the understanding of Congress as to the meaning of this act when Congress was in the process of enacting it, and again and again in repeated years on appropriation bills in identical terms this same statute has been brought up again and again in debate, that what was said there and then by members of Congress as to the received construction of this act, totally

different from that of the honorable managers, goes to show that this could not have been a statute that was not open to a difference of construction and opinion.

Now, clearly to go into that and trace it to its roots it would be necessary for me here and now to take up the analysis——

Mr. HALE. Mr. President——

The PRESIDING OFFICER. Will the counsel suspend for a moment?

Mr. HIGGINS. Certainly.

Mr. HALE. Is there any question before the Senate sitting as a court of impeachment; and if so, what is the question?

The PRESIDING OFFICER. Counsel for respondent offer to introduce in evidence certain extracts from the Congressional Record, showing debates in Congress and action of the two Houses of Congress at the time of the passage of the enactment which allows judges to receive their reasonable expenses for attending court out of their districts. They offer it for the purpose of showing the history of the enactment, and also for the purpose of throwing light upon what is the true construction of the act. To this the managers on the part of the House object, and the question is now being argued by counsel for the respondent.

Mr. HALE. It is a very plain and clear question. Has the Chair ruled upon it?

The PRESIDING OFFICER. The Chair has not. The Chair is listening to argument on the part of counsel.

Mr. HALE. Is it proposed that further time of the Senate shall be taken by argument upon this matter?

The PRESIDING OFFICER. The Presiding Officer does not feel that he is at liberty to limit the argument of counsel in this respect, or of the managers.

Mr. HALE. Then the Senate is at the mercy of the counsel for the respondent?

Mr. HIGGINS. I was about to reach a point where I think I would have demonstrated to the distinguished Senator from Maine that I am merciful, for I was going to make a suggestion, which I would have reached in a moment, and I come to it now. I did not have the opportunity of bringing this to the attention of my colleague before we come together here at this trial table to-day.

We offer to the learned managers that all this evidence shall be permitted to go in at this time for what it is considered to be worth by the Senate after argument in, and thus to save the time of the Senate in this preliminary discussion of the admissibility of evidence, and let it come in the final argument.

The reason for that suggestion, which I think should commend itself to the Senate, is this: This is a case of a trial before judges. It is not the case of a trial before a jury. It is where the evidence can go to the court, and it is the familiar knowledge of every practicing lawyer that there is no objection to allowing anything in the nature of evidence to go to the court, to be considered by it as to what worth it shall bear in the end.

That suggestion would include not only these excerpts from Congressional debates, but also the certificates of the Treasury Department of the accounts of the circuit and district judges of the United States from the fiscal year 1895 to the fiscal year 1903, not including

the justices of the Supreme Court, but being certificates identical in their make-up and character to those that have already been put in evidence by the learned managers, of the accounts of Judge Swayne, in support of their first three articles.

The question I was discussing bears upon those certificates with more force, much more, than it will upon the admissibility of these debates. That is a question which stands by itself, and has peculiar reasons for and against it. But if the learned managers will accept the offer we can close the case and allow the matter to go to argument. I hope that course will be taken.

Mr. Manager OLMSTED. Mr. President, when these other matters are offered we will determine whether we have objection to them. We have already objected to this, and I want to add simply a word. The long line of authorities which the counsel has cited seems to resolve itself down to the case of Johnson against somebody—

Mr. HIGGINS. The United States is the somebody.

Mr. Manager OLMSTED. In which the recitals in a joint resolution were accepted as evidence, in accordance with the well-known principle of law that the recital in the preamble of a public act of Parliament of a fact is evidence to prove the existence of the fact, not the debates in the House or in the Senate when the joint resolution was passed, but the joint resolution itself. That is the English and American doctrine.

I will simply add one more authority, and rest. In the case of the United States against the Union Pacific Railroad (91 U. S., 72), Mr. Justice Davis, delivering the opinion of the court, said, on page 79:

In construing an act of Congress we are not at liberty to recur to the views of individual members in debate nor to consider the motives which influenced them to vote for or against its passage. The act itself speaks the will of Congress, and this is to be ascertained from the language used.

The PRESIDING OFFICER. The Presiding Officer will submit this question to the Senate: Counsel for the respondent propose to offer certain extracts from the Congressional Record, including debates in the House and Senate, votes in the House and Senate, for the purpose, as stated, of showing the history of the enactment by which the United States judges holding court out of their districts are entitled to expenses and as throwing light upon the true construction of the act. [Putting the question.] In the opinion of the Presiding Officer the yeas have it.

Mr. SPOONER. I ask for the yeas and nays.

The yeas and nays were ordered, and the Secretary called the roll.

The PRESIDING OFFICER. The Presiding Officer desires to know whether there is any objection to his voting. [A pause.] The Presiding Officer votes "yea."

There were on the roll call—yeas 34, nays 33, as follows:

Yeas—Alger, Allee, Allison, Bailey, Ball, Beveridge, Carmack, Clapp, Crane, Cullom, Dietrich, Dillingham, Dolliver, Fairbanks, Frye, Fulton, Gallinger, Gamble, Heyburn, Kearns, Long, McComas, McEnery, Millard, Overman, Platt of Connecticut, Platt of New York, Proctor, Quarles, Scott, Smoot, Spooner Warren, Wetmore—34.

Nays—Bacon, Bate, Berry, Blackburn, Burnham, Burrows, Clay, Culberson, Daniel, Foraker, Foster of Louisiana, Gibson, Gorman, Hale, Kean, Kittredge, Latimer, Lodge, McCreary, McCumber, McLaurin, Mallory, Martin, Money, Morgan, Nelson, Newlands, Patterson, Simmons, Stewart, Stone, Taliaferro, Teller—33.

Not voting—Ankeny, Bard, Clark of Montana, Clark of Wyoming, Clarke of Arkansas, Cockrell, Depew, Dick, Dryden, Dubois, Elkins, Foster of Washington, Hansbrough, Hopkins, Knox, Penrose, Perkins, Pettus—18.

The PRESIDING OFFICER. On the question of the admission of the evidence offered, the yeas are 34 and the nays 33. The evidence is admitted.

Mr. THURSTON. Mr. President, I have already made my offer, and I will ask that the reading of the extracts may be waived and that they may be printed in the Record.

The PRESIDING OFFICER. If there is no objection, that course will be pursued.

The papers referred to are as follows:

[Congressional Record, Vol. 28, Part 5, Fifty-fourth Cong., first sess., April 24, 1896, page 4363.]

Mr. ALLEN. Mr. President, I desire to call the attention of the Senator from Iowa to a fact which came to my knowledge the other day, and it is to the effect that under this law, or laws similar to this which have been passed, where Congress allows compensation to judges who hold courts outside of their particular districts, and especially the United States appellate judges, that in all instances they certify to \$10 a day, regardless of the actual expenses to which they are put. The evident policy of the law was to cover the actual expenses of the judges at hotels and for traveling expenses not to exceed \$10 per day.

I have information from a source that I am not permitted to disclose that in many instances where the legitimate expenses and hotel bills are not to exceed three or four dollars a day, where a judge has gone to a city and stayed there perhaps for a month or two months—

Mr. WOLCOTT. We can not hear the Senator.

Mr. ALLEN. In cases where the judge has gone to a place where the court is to be held, and has no expense except the mere expense of hotel bills, remaining there for a month, or, possibly, all winter in some cases, or for several months at least, uniformly he certifies to \$10 a day, which is the full maximum allowed by the law. I call the attention of the Senator from Iowa to this fact, so that this bill may be amended and the law not be abused by the very officer whose duty it is, above all others, to see that the law is observed. This bill provides:

"That no such person shall be employed during vacation; of reasonable expenses for travel and attendance of district judges directed to hold court outside of their districts, not to exceed \$10 per day each, to be paid on written certificates of the judges."

There is a maximum fixed. There may be days when \$10 would be required to cover the expenses of the judge, and it would be perfectly proper for him to draw that sum and certify to it; but I submit that it is improper and in violation of the spirit, if not of the language, of the statute that the judge, simply because he has the power to certify, will be enabled to take from the Treasury of the United States \$10 for every day to cover his expenses, when his actual expenses do not exceed four or five dollars a day.

It may be a small item; probably it is a small item, but it is not small in so far as it develops a disposition upon the part of high judicial officers of the country to violate the spirit of a law which they themselves are engaged in enforcing against criminals and other violators of the law.

* * * * *

Mr. ALLEN. I mean to assert, according to my information, and I look upon it as reliable, and I think inquiry at the Department of Justice would disclose the fact, that there are Federal judges in the United States—there is where they belong—who uniformly certify to \$10. They take the maximum under a certificate covering their expenses.

Mr. GRAY. Do I understand the Senator to say that all the judges certify to \$10 a day?

Mr. ALLEN. Not all. I do not say all. But I say that there are judges who do it—district judges holding, for instance, courts of appeal. Some of them do certify uniformly to \$10 a day and take \$10 a day out of the Government in cases where their

legitimate expenses are not, and in the nature of things can not be, to exceed three or four dollars a day.

* * * * *

Mr. ALLISON. The Senator from Nebraska will observe that the only object of this provision is to place the district judges upon an equality with circuit judges as respects their expenses.

Mr. ALLEN. Yes, sir; I observe that they are put upon an equality. What I am contending for, and what I hope the honorable Senator from Iowa will remedy, is that these men shall not be permitted to violate the law themselves.

Mr. ALLISON. Does the Senator believe that any district judge or circuit judge is likely to violate the law by making a false certificate? The Senator must remember that this includes all traveling expenses, as well as expenses while at the place of holding court.

Mr. ALLEN. I hope the Senator from Iowa will not put me in the attitude of making the charge that all Federal judges violate the law, for I do not make it.

Mr. ALLISON. I certainly would not put the Senator in any such attitude.

Mr. ALLEN. I say some of them do, according to my information. A judge is a human being. He is no more of a man after he becomes a judge than he was at the time he became a judge. If he had frailties at that time, he carries them to the bench with him.

The proposed statute fixed the maximum in these words:

"Of reasonable expenses for travel and attendance of district judges directed to hold court outside of their districts, not to exceed \$10 per day each, to be paid on written certificates of the judges."

That carries the implication, which is as clear as language can make it, that he shall not receive \$10 a day unless his actual expenses amount to \$10 a day.

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[Page 4364.]

Mr. ALLEN. I suggest to the Senator from Iowa the propriety of inserting, after the word "judges," in line 21, on page 111, the words:

"Which said certificate shall in all cases contain a statement that the expenses therein certified have actually been incurred or paid."

* * * * *

I move, then, to insert, after the word "judges," in line 21, page 111, the words: "Which said certificate shall state in all cases that the judge had actually incurred or paid the expense therein stated."

The VICE-PRESIDENT. The question is on agreeing to the amendment of the Senator from Nebraska to the amendment of the committee.

The amendment to the amendment was agreed to.

The amendment as amended was agreed to.

[Congressional Record, vol. 28, part 6, Fifty-fourth Cong., first sess., May 19, 1896, page 5391.]

Amendment No. 177: That the House recede from its disagreement to the amendment of the Senate No. 177, and agree to the same with an amendment, as follows: In lieu of the matter inserted by said amendment insert the following: "and such payments shall be allowed the marshal in the settlement of his accounts with the United States;" and the Senate agree to the same.

[May 21, 1896, page 5510.]

The PRESIDING OFFICER. The question is on concurring in the report of the conference committee.

The report was concurred in.

[Congressional Record, volume 31, part 3, Fifty-fifth Congress, second session. February 28, 1898, page 2283.]

Mr. UNDERWOOD. Now, this section in the bill very materially changes the provisions of section 715 of the Revised Statutes. In the first place, it provides a compensation of \$10 a day to the district judges during the time they are traveling from their homes to the places where they hold extra courts. The statute already gives

them \$10 a day compensation during the time they are holding courts, but this gives them an additional compensation of \$10 a day while traveling back and forth. Now, these judges receive \$5,000 a year salary from the United States, and the law provides for their being paid mileage and traveling expenses, so that I see no reason why their compensation or salary should be increased in this way.

* * * * *
 Mr. CANNON. My friend from Alabama is after the \$10 a day to cover the expenses of traveling and attendance of the district judges when attending district courts—

Mr. UNDERWOOD. As I understand, the judge gets \$10 a day after he gets to the place where he is going to hold the court.

Mr. CANNON. Not the district judge, but the circuit judges.

Mr. UNDERWOOD. When a new district judge is sent to hold court when another judge is sick, he gets, under the law, \$10 a day.

Mr. CANNON. I do not so understand it. Let me give my understanding, so as to get the exact difference between us. I understand the district judge gets his \$5,000 a year. If that is it—

Mr. UNDERWOOD. Yes.

Mr. CANNON. When he goes outside to hold court he does not get anything.

Mr. UNDERWOOD. My friend from Illinois, I think, is mistaken. When he goes to attend court he gets \$10 a day compensation for holding that court during the days he is there, and I think that is sufficient, for he already gets \$5,000 a year, and to pay him \$10 per day while at court will more than cover his expenses, and it is sufficient compensation without giving him the additional amount in this bill.

* * * * *
 Mr. CANNON. I understand when the circuit court is held away from the residence of one of the circuit judges—I mean the appellate court—they get \$10 a day.

Mr. UNDERWOOD. I do not so understand it if it is within the circuit of the judge.

Mr. CANNON. Yes; if it is away from the place of his residence. The truth is, if there is any abuse it is as to the judges that perform appellate duty. Two of them always are away from their homes. They get their full salary and then \$10 a day besides, whereas, it seems to me, there is no abuse as to the district judge, because he only goes away on special occasions and ought to have \$10 a day.

Mr. UNDERWOOD. My friend and I do not agree. I insist that the law is that when he gets to the court outside of his district that he is going to hold he gets his \$10 a day. This proposes to give him \$10 a day during the time he is traveling.

Mr. CONNOLLY. This provision in the bill is in precisely the same language as the law stands to-day. There is no change. Here is the law as it was passed by the last Congress:

“Provided further, That no such person shall be employed during vacation; of reasonable expenses for travel and attendance of district judges directed to hold court outside of their districts, and to exceed \$10 per day each, to be paid on written certificates of the judges, and such payments shall be allowed the marshal in the settlement of his accounts with the United States; expenses of judges of the circuit courts of appeals; of meals and lodgings for jurors in United States cases, and of bailiffs in attendance upon the same when ordered by the court; and of compensation for jury commissioners, \$5 per day, not exceeding three days for any one term of court.”

Mr. UNDERWOOD. Does the gentleman say that became a law in the last Congress?

Mr. CONNOLLY. That is the law. Let me say, the act of March 3, 1891, provided for the creation of the court of appeals and for the payment of an additional circuit judge in each judicial circuit, provided that where the judges attended that court away from their places of residence they should be entitled to compensation, and ever since then the law has made appropriation to carry out the letter of the law creating the circuit court of appeals. I investigated that matter myself at the Department of Justice this morning, and spent an hour there with the officials that have the accounts under their supervision, and I find that the law has been so since the circuit court of appeals was established.

Mr. UNDERWOOD. I looked up the law in the Revised Statutes. I will say candidly that I did not look at the acts of the last Congress, and if the act was passed by the last Congress then I may be in error.

Mr. CONNOLLY. It was enacted before the last Congress, but how long ago I do not remember; I think probably about 1891, the time of the creation of the court of appeals.

Mr. POWERS. If I understand the gentleman from Alabama [Mr. Underwood] correctly, his criticism applies to this allowance to the district judges when they are called away from their districts to attend court.

Mr. UNDERWOOD. Yes, sir.

Mr. POWERS. For the information of the gentleman, let me say that for more than

twenty or twenty-five years this statute has been in force. Many years ago the language of the statute relating to allowances of this kind was that the judges should be allowed their "reasonable expenses."

That wide latitude of language was greatly abused. Sometimes the judges charged as high as \$40 a day. For that reason Congress cut down the allowance to \$10 a day and made it apply in terms both to travel and to attendance upon court. The object of the allowance was to indemnify the judges for their expenses in leaving home, and included, of course, expenses of transportation as well as expenses while attending court.

Our district judge in the State of Vermont does more work probably in the city of New York than he does in our State. When he leaves home for the purpose of holding court in New York he is allowed \$10 a day from the time when he leaves until he returns, the allowance of \$10 covering his transportation expenses and his expenses while in New York. As the gentleman will readily see, the allowance is not a very liberal one.

[Page 2284.]

Mr. UNDERWOOD. As I understand, the law at present does not apply to the time taken up by the judge in traveling from his home to the place where he is going to hold court.

Mr. POWERS. Oh, yes it does. The language of the act is "expenses for travel and attendance, not to exceed \$10 per day;" that is, \$10 per day for traveling, or \$10 per day while in attendance at court.

Mr. UNDERWOOD. I understand that such is the provision of this bill, but I do not understand that it is the existing law.

Mr. POWERS. It has been the law in this same form for a great many years.

Mr. UNDERWOOD. The gentleman from Illinois [Mr. Connolly] and the gentleman from Vermont [Mr. Powers] insist that this provision is now existing law as passed by the last Congress. I therefore wish to ask the gentleman from Illinois [Mr. Cannon] why the provision has been incorporated in this bill at this time?

Mr. CANNON. I will tell the gentleman exactly how I understand this matter, and I want to be entirely frank with him and the Committee of the Whole.

Ten dollars a day is the allowance now for travel and expenses to the circuit judges. When one of these judges does appellate duty away from home he certifies his account for expenses upon the basis of \$10 a day. And that is right enough. When a circuit judge of Indiana or the southern district of Illinois goes to Chicago for the purpose of holding court (and there is work enough there for three judges), all he has to do is to certify his account for expenses at the rate of \$10 a day, and upon his certificate the allowance is made. But this provision of the existing law does not apply to a district judge. He must make out a detailed account of his expenses. If, for instance, he pays 10 cents for blacking his boots, or if he buys a breakfast at a restaurant for 50 cents or a dollar, he must include such items in the detailed statement of his expenses.

That statement is sent down here and must pass the approval of the accounting officers of the Treasury, who must decide as best they can whether the charges are reasonable. Now, the provision of this bill, as we have reported it, will allow these district judges \$10 a day upon their certificates in the same way that the circuit judges get their allowances (which we can not prevent them from getting) at the rate of \$10 per day. If this provision goes out of the bill these district judges must continue to render an account of expenses in detail. That is the state of the case as I understand it, and I think I understand all there is in it.

Mr. SHAFROTH. And the effect of allowing these judges \$10 a day will be to save money to the Treasury.

Mr. CANNON. In effect it does that. Because when one of these judges is away from home, holding court in Chicago or New York City or Dallas or anywhere else outside of his district, an allowance of \$10 a day for expenses is not extravagant.

* * * * *
Mr. UNDERWOOD. The first provision does not limit this payment to the judges of \$10 a day to the time they are actually holding court. Now, if the gentleman from Illinois will amend that part of the provision so that it shall apply to the judges, so that it shall only pay them \$10 a day on the days they are actually holding court, I will withdraw the point of order.

Mr. CANNON. Well, I think it ought to so apply. I think the accounting officers would so construe it; but I have no objection to its going in, if the gentleman desires.

* * * * *
Mr. DOCKERY. Let me suggest to the gentleman from Alabama, and the gentleman from Illinois, to insert, in line 14, page 104, after the word "each," the words: "Not to exceed \$10 per day each, during the time the court is in actual session."

Mr. CONNOLLY. That would exclude traveling expenses.

Mr. SULLIVAN. You might make it such per diem only when they are in actual attendance on the courts.

Mr. CANNON. I think the act as we have got it accomplishes what the gentleman wants.

[Congressional Record, Fifty-seventh Cong., second sess., vol. 36, part 2. January 27, 1903, page 1337.]

Mr. WARNER. Then it increases the salaries of the circuit judges \$1,000 and the salaries of the district judges \$1,000. That is all, but it takes away from the circuit judges and the district judges any compensation whatever for traveling or other expenses when they are on duty away from their homes. So, as a matter of fact, it does not increase the compensation of the circuit or the district judges.

Mr. RICHARDSON, of Alabama. Will the gentleman allow me a question?

Mr. WARNER. Certainly.

Mr. RICHARDSON, of Alabama. Did I understand the gentleman to say that under the present bill everything in the way of extra charge, traveling expenses, etc., is taken from them?

Mr. WARNER. All taken from them by this bill.

Mr. RICHARDSON, of Alabama. And he is not allowed the ordinary \$10 a day?

Mr. WARNER. All extra compensation is taken away and the salary covers everything.

[January 27, 1903, page 1338.]

Mr. MANN. I would ask the gentleman what is the extra compensation that the judges receive to-day? I refer to the judges of the circuit court.

Mr. WARNER. When they serve on the court of appeals, as I remember, they get \$10 a day, and a district judge, if he is detailed on the court of appeals outside of his district, as I remember, gets \$10 a day extra.

Mr. MANN. Do I understand my colleague to say that under this bill if a district judge holds court outside of his district he will be entitled to no additional compensation?

Mr. WARNER. None whatever. Here is the provision, line 14, page 2:

"That after the passage of this act no payment shall be made to any of the judges mentioned in this act for expenses."

I will say that, so far as I am concerned, I am perfectly willing to have that stricken out.

Mr. OVERSTREET. The district judges do not get anything at all now for expenses. The circuit judges do.

Mr. WARNER. Then I stand corrected.

Mr. MANN. What is the gentleman's statement?

Mr. OVERSTREET. The district judges do not get any additional pay for expenses under the present law. The circuit judges are entitled to \$10 a day for expenses under the present law.

Mr. MANN. The district judges who hold court outside of their districts do get additional pay?

Mr. OVERSTREET. When they hold court outside of their districts, but not inside of them.

Mr. MANN. Does this propose to prohibit the additional compensation of district judges who hold court outside of their districts? Is it proposed to prohibit them from receiving additional compensation?

Mr. WARNER. If this were submitted to me as a judge, on first blush and without going into the authorities on the subject I should say that it cut off all compensation other than the salary.

Mr. MANN. Then I would call my colleague's attention to this state of affairs. In our district and in our circuit in the city of Chicago there are constantly from one to three district judges from other districts holding court. It is preposterous to suppose that you will get those district judges to come there and pay their own expenses when they receive no additional compensation.

Mr. WARNER. That is absolutely true, and for that reason I most strongly favor giving the northern district of Illinois an extra circuit judge and an extra district judge.

Mr. MANN. Oh, well, we want three or four district judges.

Mr. WARNER. We will take all they give us.

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Mr. MANN. The fact is, we use the district judges from Wisconsin, who, in their districts, do not have a great deal of business. They help us out in the city of Chicago.

Mr. WARNER. You admit that the business is increasing, and that the judges are overworked?

Mr. MANN. On the contrary, I am prepared to show my colleague that the Federal business in the circuit and district courts in Chicago is not as great to-day as it was a year ago, was not as great a year ago as it was two years ago, and was not as great two years ago as it was ten years ago.

Mr. WARNER. It would be very interesting reading if you would furnish it.

Mr. MANN. All you need to do is to consult the reports of the Attorney-General of the United States, which I have done.

Mr. WARNER. I know that Chicago and Cook County and northern Illinois are constantly calling and begging for outside help, not only on the Federal bench, but on the State bench. They call in circuit judges from the country all over the State to come and hold court for them in the State courts, and pay them \$10 a day extra for doing it.

Mr. MANN. Does my colleague think any of the circuit judges outside of Chicago would come to Chicago and hold court in the State courts for nothing?

[January 27, 1903, page 1340.]

Mr. COOMBS. There is an increase of \$1,000; but considering one of the amendments in this bill—that striking out expenses—has the gentleman ever considered the question as to whether this is an actual reduction of salary so far as it pertains to the judges of the circuit courts in California and other districts of the United States?

Mr. CRUMPACKER. I have. I have thought about that aspect of the question, and yet I think it is a wise thing to do.

Mr. COOMBS. A wise thing to reduce the salaries when the bill proposes to increase them?

Mr. CRUMPACKER. I think it a wise provision, because judges are human, and if a judge could go away from home to sit as a member of the court of appeals and get \$10 a day extra compensation he may be inclined to be away as much as possible. That is the reason for the amendment, I understand.

[January 27, 1903, page 1342.]

The Clerk read as follows:

"That after the passage of this act no payment shall be made to any of the judges mentioned in this act for expenses."

Mr. OLMSTEAD. Mr. Speaker, I move to strike out the paragraph just read.

[January 27, 1903, page 1343.]

The question was taken; and on a division (demanded by Mr. SMITH, of Kentucky) there were—ayes 80, noes 69.

So the motion was agreed to.

Mr. RANDELL, of Texas. Mr. Speaker, I offer the following amendment:

The Clerk read as follows:

"Insert, after line 15, on page 2, the following:

"That it shall be unlawful for any of the judges of the United States courts to accept or receive any gifts, free transportation, or frank from any corporation or person engaged in operating any railroad, steamboat line, express or telegraph company. Any violation of this provision shall be punished by a fine not less than \$100 and not exceeding \$5,000."

* * * * *

The yeas and nays were ordered.

The question was taken; and there were—yeas 87, nays 114, answered present 11, not voting 141.

[January 27, 1903, page 1344.]

Mr. ROBINSON, of Indiana. I offer the following amendment, after line 13, page 2.

* * * * *

Insert, after line 15, page 2, the following:

"That after the passage of this act no payment shall be made to any judge mentioned in this act for expenses of railroad transportation not incurred by such judge."

* * * * *

The question was taken; and the amendment was rejected.

Mr. THURSTON. I now offer in evidence certified statements from the Treasury of the United States showing in detail the number of days in each year from April 1, 1895, down to March 31, 1903, during which the several circuit and district judges of the United States were attending court away from home or out of their districts, and showing the amount of expenses for travel and attendance to which each and all of them certified and received.

I make this offer as tending to show from an analysis of the certificates and accounts the contemporaneous judgment which has been placed upon the statute in question by the action of many of the judges of the courts of the United States, and also by the administrative officers of the Treasury Department.

Mr. Manager OLMSTED. Mr. President—

The PRESIDING OFFICER. One moment. What is the Presiding Officer to understand? How many certificates are there?

Mr. THURSTON. One certificate from each of the nine circuits of the United States. The whole offer covers every day's attendance within the years I have stated of all of the circuit and district judges of the United States, and shows the amounts which each certified to and each received.

Mr. Manager OLMSTED. I call the attention of the honorable counsel to the fact that the statement which he offers here is entitled thus:

Statement showing amounts paid to United States circuit judges as expenses claimed while attending circuit courts of appeal away from their residences.

There is nothing here about any certificate by them.

Mr. HIGGINS. It is under the statute that they made the certificate.

Mr. Manager OLMSTED. You are not offering the certificate?

Mr. HIGGINS. No.

Mr. THURSTON. No.

Mr. Manager PERKINS. But they could only be paid under certificates.

Mr. Manager OLMSTED. I desire to ask the honorable counsel in response to what allegation or averment in what article of impeachment this offer is made?

Mr. THURSTON. In answer to the allegations of articles 1, 2, and 3.

Mr. Manager OLMSTED. I call attention to the fact that the averments in those articles contained make no reference whatever to any judge in the United States except the respondent.

Mr. THURSTON. I also call attention to the fact that it makes no difference to the law of the land, but we can use it in this case.

The PRESIDING OFFICER. The Presiding Officer does not yet understand the precise nature of the evidence proposed to be introduced.

Mr. THURSTON. Mr. President, it is an itemized statement from the Treasury of the United States showing the number of days in the year for which the several judges of the United States were paid their travel and attendance expenses when attending court outside of their districts. It shows the payment to each one of them—payments of the same nature and character as those made to Judge Swayne. I do not say it shows that they all charged \$10 a day.

The PRESIDING OFFICER. This includes all the circuit and district judges of the United States?

Mr. THURSTON. All.

Mr. Manager OLMSTED. Before I make my objection I desire that

it be noted on the record that what this paper purports to be, as stated in the caption, is this:

Statement showing amounts paid to United States circuit judges as expenses claimed while attending circuit courts of appeals away from their residences, and amounts paid to United States district judges as expenses claimed while holding court out of their own said courts, being in the first circuit.

And then there is one for each of the other eight circuits. Is that a correct statement?

Mr. HIGGINS. Yes; that is a correct statement.

Mr. Manager OLMSTED. To that I offer the objection, which I will ask the Secretary to read.

The Secretary read as follows:

First. It is not responsive to any allegation contained in any of the articles of impeachment.

Second. If the subject-matter of the offer in any way relates to averments contained in the answers of respondent to the first, second, and third articles of impeachment, nevertheless the said averments are not responsive to any charge contained in the articles of impeachment and present no issue for determination in this cause.

Third. The offer of respondent is only to show that the judges named did receive for their expenses an amount equal to \$10 a day in the aggregate, but does not include an offer to prove that they did not actually expend as much as, or more than, the amount charged by the honorable judges to the Government as their said expenses of travel and attendance in holding court, and the evidence is therefore immaterial and irrelevant.

Fourth. That it is not averred in the answer nor offered to prove that the respondent, either at the time of or prior to the alleged false certification of his expenses in 1897, had consulted or conferred with or taken the opinion or had knowledge of the action of any of the judges referred to in the offer.

Fifth. It is not competent for respondent, in his own defense, to prove the usage or practices of other judges in other courts, particularly as it is not offered to show that he had knowledge thereof.

Sixth. If respondent has been guilty, as charged, of falsely certifying his expenses and collecting upon his own certificate an excessive amount from the Government, it is no justification for him to show that he subsequently ascertained that others had been guilty of the same offense.

Seventh. The certificates offered from the Treasury Department are not under its seal as required by the statute to make them admissible in evidence.

Eighth. The statements offered are not copies of any official papers or records remaining in the Treasury Department, but consist of some figures and data purported to have been made up after the consideration of such papers and records. These do not purport to show the amounts of expenses certified by the judges named therein, nor whether they were more or less than \$10 a day. They show merely the amounts alleged to have been paid in each instance, without stating whether the said amount was more or less than the amount certified by the judge to have been expended. They do not include the certificate of the judge nor the account of the marshal who paid him. They are partial and incomplete and not authorized by any statute to be used as evidence.

Ninth. The offer contains an unwarranted insinuation that other judges have collected from the Government for expenses sums greater than they actually expended, but without showing or offering to show what amounts they actually did expend or certified as having been expended, and if received will necessitate the calling of all of the said judges, as a matter of justice to them and to all the people of the United States, for the purpose of rebutting the said insinuation contained in the offer.

Mr. Manager OLMSTED. Mr. President, if I may be permitted to speak upon this point, there is nothing in any article of impeachment making any reference whatever to any Federal judge save only this respondent, who is himself charged in the first article with having in 1897 falsely certified to the amount of his expenses and received the money upon his said certificate. In his answer, after admitting that he did make that certificate, but denying in rather a vague way its falsity,

he says on page 27 of this record—it is the last paragraph on the page—

Respondent says that he is fortified and confirmed in his honest belief that the construction so placed by him, etc., was and is right * * * by the fact that he is informed—

Now, in 1905, nine years after he made that certificate, he is informed—

and verily believes, and as the records of the Treasury Department will show, that many of the circuit judges of the United States and district judges did the same thing.

That, I submit, Mr. President, is new matter, not responsive to anything in the charge and having no proper place in the respondent's answer, and evidence under it is inadmissible upon the ruling of the Presiding Officer and of the Senate made upon the 14th instant upon our offer to prove the inconvenience to suitors and counsel of the absence of the respondent from his district. It was ruled inadmissible. That evidence was responsive to new matter inserted in the answer of the respondent, but the answer itself in that particular was not responsive to any averment in the articles of impeachment.

I want, just at this point, Mr. President, to state that the honorable counsel for the respondent took us to task for making a written offer embracing an admission made by the respondent, to which they objected. He took us to task in terms of great indignation for trying to get before the Senate matter in an improper way. I call your attention to these three exhibits attached to their answer, and ask what words of condemnation are strong enough to apply to the introduction in that manner of what is intended to be evidence in advance of the hearing of the case for the purpose of influencing the court in its decision? Upon the ruling I have already cited, and upon every authority this evidence would have to be rejected for that reason.

But next, Mr. President, the offer is only to show that the judges named in those papers did, in certain instances, receive for their expenses as much, or a sum equal to \$10 for each day if divided by the number of days. But it is not offered to show—the statement offered does not even refer to the subject, and respondent makes no offer to show—that those judges, nor any of them, did not actually expend that sum, and this is, I say, a cowardly insinuation against honorable judges, the dragging of their names in the mire without any attempt to prove that they have been guilty of any offense whatever.

Of course, Mr. President, if a judge is holding court in New Orleans, where, as I know from very recent experience, people may reasonably expend a good deal more than \$10, or in New York, or in Chicago, or in San Francisco, and if his expenses amounted to \$12.50 to \$15 a day, he could get not to exceed \$10; and so, of course, this statement would show that what he got amounted to \$10. That is the maximum fixed by the law, but it is not the slightest evidence that he did not expend the money. They do not offer to introduce the certificates showing what his actual expenses were. So I say, that, lacking that essential element, it is not evidence at all in this case.

It is not pretended that this respondent at the time of making his certificate in 1897 knew the opinion of or consulted any other judge in the United States.

In regard to the fifth objection, Mr. President, it is not competent for the respondent in his own defense to prove the usage or practice of other courts or other counties. I propose to submit a very high authority. In the celebrated trial of Prescott in Massachusetts, made notable by the eminent array of council and managers involved, Judge Prescott, the probate judge, entitled upon one side of the court to take fees, was charged with taking more than the law permitted him.

In one case the excess was a dollar and ninety-eight cents, and in another article some \$39 of excessive fees are involved. He was convicted upon both charges. He offered to prove the usage of other courts and other counties throughout the State for the purpose of showing his intent to have been an honest one and in accordance with the practice throughout the State. That offer was made by Mr. Samuel Hoar and supported by himself and Daniel Webster, but they were completely overthrown in their argument by Mr. Manager Shaw—the same Mr. Shaw who afterwards became chief justice of the supreme court of Massachusetts, and, in the opinion of many men, secured a place in the history of the jurisprudence of this country second only to that of Chief Justice Marshall. I ask that the court will hear the offer which was made by Mr. Hoar in that case.

The PRESIDING OFFICER. The Secretary will read.

The Secretary read as follows:

The counsel for the respondent read the motions when put into writing, as follows, viz:

"1. And now the counsel for the respondent move that, in order to rebut the charge of willful and corrupt misconduct, they may be permitted to prove that at the time of the respondent's appointment to office there did exist, and continually since has existed, in the probate offices of the several counties in this Commonwealth a practice, according to which in cases of application for administration, certain official papers are prepared and executed, and certain official acts done and performed, which are not particularly enumerated in the statute called the fee bill, and fees paid therefor, and to show the usual amount of such fees.

"2. And now the counsel for the respondent move that, in order to rebut the charge of willful and corrupt misconduct, they may be permitted to prove that at the time of the respondent's appointment to office there did exist, and continually since has existed, in the probate offices of the several counties of this Commonwealth a practice according to which, in cases of application for administration, certain official papers are prepared and executed, and certain official acts done and performed, which are not particularly enumerated in the statute of the Commonwealth, commonly called the 'fee bill.'"

Mr. Manager OLMSTED. Mr. President, to make this as brief as possible, that offer having been elaborately argued by those eminent gentlemen, was rejected by a vote of more than 2 to 1. Judge Prescott was convicted and removed from office upon those two articles. If this respondent has been guilty of any offense it is no excuse for him to say that somebody else did the same thing in later years, and in some other court; and in any event his offer does not include anything tending to show improper conduct by any other judge.

But again, that paper is not offered under the seal of any Department. It is not so authenticated as to be admissible in evidence. It does not purport to be a copy of any record in any Department. It is simply a lot of figures made up by somebody purporting to have been abstracted or extracted from certain documents, we know not what. It certainly does not show that any other judge ever certified to \$10 of expenses when his actual expenses were less.

Now, when we offered the three certificates showing Judge Swayne's

certificates and the action thereon we were required by the honorable counsel for the respondent to put in the whole record, the marshal's account, the action of the Treasury Department—every paper on file. These papers which they offer are not evidence in any proceeding on earth and would not be received in any court in Christendom.

Mr. HIGGINS. Mr. President, I must confess to my surprise at the last objection raised by the learned manager. It is true, I find, that the certificate to these statements is not attested by the seal of the Treasury Department, but it is signed by the Secretary of the Treasury; and the only effect of the objection would be to require us to have the seal put to this paper between this time and the next meeting of this body. I hardly suppose that the learned managers will stand on that. An objection which merely goes to the authentication and which does not dispute its genuineness, it seems to me, is hardly worthy of either this tribunal or this grave proceeding. Nor have I supposed that either side in the prosecution of this case would undertake to put unnecessary tasks upon the other or lengthen the proceedings.

The learned manager said that the counsel for the respondent had compelled the managers to put in evidence certain certificates of the judge when they put in their Treasury statements in support of the articles against Judge Swayne—the first, second, and third. We put no compulsion upon them that I remember. They took their own course, and a very proper course. They rely upon their allegation of the untruthfulness of the certificate, and of course they put in the certificates. It would have been open to us to have loaded up this record with all of these papers from the Treasury Department and to have brought the originals here to the extreme disturbance of the public business.

But, as we supposed, contributing to the need of dispatch of the Senate under its present conditions, we have got a succinct statement which gives all the material facts; for, Mr. President, behind the certificate here, as to every item, it is presumable, and there certainly is in the Treasury Department, certain other evidence. The course of proceeding in this case, as shown by the very certificate put in by the managers, is that at the end of a session of court held by a judge away from his home, at the circuit court of appeals or away from his district in the district court, he presents his certificate to the marshal, stating the number of days and the amount of expenses, which he certifies to, and on that the marshal pays to him the amount and takes his receipt, which, under the form prescribed by the Department of Justice, is at the bottom of the certificate. A form of that was presented by my colleague only a few moments ago and admitted without objection.

That certificate is by the statute made the voucher upon which the marshal is reimbursed for his payment to the judge; and, as I shall call attention to, the statute requires that he shall be repaid—that he shall be allowed his account. The marshal then presents such item with the other items going to make up his account, his entire account, under the act of 1875, which we put in evidence here this afternoon, to the United States judge for that court. In the particular cases, we have an object lesson here in the certificate introduced by the managers in condemnation of Judge Swayne, that there the marshal of Texas in two instances presented that account before the local judge, Judge Bryant, who did not sit in two certain trials growing out of the

failure of a bank because he was interested in the matter in some way, and Judge Swayne held two long trials, one in one year and the other in another year, and made these certificates.

Now, the marshal presented his account to Judge Bryant, and, under the statute, the United States attorney for that district was at that time required to be present and his presence to be noted upon the record. The marshal's account had to be sworn to. The judge's certificate is prescribed, and the statute prescribes that he shall approve or disapprove of that account, as shall be according to law and as may be just.

So you have now the act of the marshal in paying the judge, and the act of the local judge in approving the account in the presence of the district attorney, who is there when he approves it in order to protect the United States. All that happens in the very district where the expenditures are made and where the judge knows and the district attorney knows and the marshal knows, each of their own knowledge, as to what is the amount of expenses that would be involved in a residence there. The account then goes with the marshal's to the Department of Justice, under the terms of the act which will be printed in the Record to-morrow, and is there audited, in the first instance, by the Auditor for the Department of Justice. From there, after the lapse of sixty days, it goes to the Treasury Department and is audited by the Auditor for the State and other Departments. It is then subject to the disallowance of the Comptroller, either of his own motion or upon its being brought before him.

You have, therefore, Mr. President, in this case the act in succession of six executive officers in confirmation or disallowance of such accounts. These certificates show that there has not been a single account disallowed by all of these officers; that from the beginning to the end there has been no objection made under the terms of this statute to the construction placed upon it by Judge Swayne, namely, that the certificate under which the payments were made were those that allowed a certificate of \$10 a day irrespective of the fact as to whether that amount was actually expended or not.

Mr. Manager OLMSTED. I do not like to interrupt the honorable counsel, but I certainly object to his stating the contents of this table unless he states it correctly. It does not state any one of the things he has been suggesting. It simply shows the amounts paid to these people, and nothing more.

Mr. HIGGINS. Mr. President, I did not expect that objection. I have been stating the acts of Congress and the duty of the officers out of which these statements grow and the scrutiny through which they had to go. No allowance can be made of over \$10 a day, and every allowance that is up to \$10 a day is an acquiescence in the terms of the statute. There is no disallowance by it. So the learned manager is quite mistaken. I am obliged to him for the interruption, for it makes me put this vital point more clearly, and I hope with complete clearness, to the Senate.

Mr. Manager OLMSTED. Then, before the honorable counsel puts it, will he allow me to oblige him again by the suggestion that, as the act requires the marshal to pay the judge upon his own certificate provided the amount does not exceed \$10 per day, all these other officers he has named have nothing to do with it unless he does exceed \$10 a day.

Mr. HIGGINS. That, Mr. President, brings me to the point of this case exactly. I am obliged to the learned manager; I meet his challenge, and I ask him to reply to me when it is done. I ask the learned manager if this fraud, which is a fraud before this Senate, was not such a fraud when it was brought before Judge Bryant? If it is a fraud now, it was a fraud then; and was there anything that has been proved by these witnesses that Judge Bryant did not know of his own knowledge? Did he reside in Tyler? I do not care. If he did, he knew it because he lived there. Did he reside elsewhere? Then he had to go away from his home, though in his district, to be sure, when he held court in Tyler, and he knew what it cost him just as much as Judge Swayne knew. Did not the district attorney know it? Did not the marshal know it?

And does the learned counsel pretend to say that because of the terms of this certificate, as prescribed by the acts of 1891 and 1896, if that was a crime, it was not the duty of that district attorney to present Judge Swayne to his grand jury and have him indicted; that it was not the duty of Judge Bryant to bring it to the attention of the district attorney; that it was not the duty of the marshal to protest? Is it possible that there is any fraud that can exist within the jurisdiction of the Auditor for the Department of Justice, of the Auditor for the Treasury Department, of the Comptroller of the Treasury that they can not unkenel and uncover, and that it is not their duty to do it?

No, Mr. President, it can not be held in the face of that that any such construction could be put by them upon the act of 1891 and the act of 1896 as to these fees. They did not abandon their duty; they do not stand here as convicted of any such absence of lack of it. What they did do was to say, "We are concluded by the certificate because we can not go behind it; we are concluded by the certificate because the statute intended to make it an allowance when the judge certified it, irrespective of what the actual expenses were."

The Senate will perceive, Mr. President, therefore, that the admissibility of these certificates rests upon something else than the mere act of the circuit and district judges of the United States in their several and respective actions in the amounts they certified under this statute. It brings up as a ground of admissibility of these certificates the contemporary construction placed by the executive officers upon the certificates of the judges as made from time to time. The form in which we have presented it is compendious. It is stripped of every unnecessary matter of evidence, which would merely load it up with lumber. It is brought down to the naked skeleton of facts of what is vital; but it puts before the Senate all of the evidence, coupled with the acts of Congress, that is necessary, and is in no sense unfair to the managers, because it apprises them of everything that they might desire to know.

Mr. President, I had hoped that this discussion would be left to the final argument; and for my colleague and myself we are willing that that course should be pursued now. I would stop at once any further discussion of this subject and leave it until the final argument to complete then what I have already said, so as not to take up the time of the Senate; but that offer does not seem to meet with the views of the learned managers, and I am compelled, therefore, to go into the discussion of the case—I say of the case—as made now by this objection to our certificates.

What we contend, Mr. President, is that the proper construction of

these acts of Congress of 1891 and 1896, as to judges holding court away from their homes or out of their districts, is the one placed upon it by Judge Swayne; and that is they were authorized to certify their expenses at \$10 a day as an allowance or compensation for such services. I shall endeavor to be very brief. The act is:

That any justice or judge who, in pursuance of the provisions of this act, shall attend the circuit court of appeals held at any place other than where he resides—

And, *mutatis mutandis*, it is the same in the case of a district judge when he holds court out of his district—

shall, upon his written certificate, be paid by the marshal of the district in which the court shall be held his reasonable expenses for travel and attendance, not to exceed \$10 per day, and such payments shall be allowed the marshal in the settlement of his accounts with the United States.

The prior state of the law was that the judge for such service was paid his actual expenses upon vouchers filed with his accounts. This will not be disputed, I presume, and I have assumed that there is no doubt as to the state of the law.

The true construction of these statutes is that Congress intended that a judge rendering such service should be paid \$10 a day as an allowance for compensation for the service. That such is the true construction of the act will appear from its provisions, as shown by its language, and from the changes wrought thereby.

What is meant by "reasonable expenses" as used in the act? It was changed, Mr. President, from "actual expenses," and, therefore, presumably on its face does not mean "actual expenses."

Mr. Manager OLMSTED. May I interrupt the honorable counsel to suggest whether my understanding of the rule is correct—that upon interlocutory motions of this kind argument is limited to one hour, and that the managers on their motion have the opening and the close. I simply do not want the honorable counsel to cut me out of my reply.

Mr. HIGGINS. How long have I spoken?

Mr. Manager OLMSTED. I suggest that counsel is not discussing the admissibility of evidence, but is making an argument on the case, to which I do not object if it does not take my time.

Mr. HIGGINS. Understand, Mr. President, I am arguing that this evidence is admissible because of the contemporary construction placed upon the statute by the officers, and that the statute is one which will bear construction; that it is open to construction. If it is not open to construction, if it is so clear, as the managers contend, that there is no doubt about it, in such case as that the authorities would not apply.

I must therefore make a case where it is apparent upon the face of the statute that it is doubtful and is uncertain, and hence I am compelled to go to that task if this question is to be determined on its merits. I regret it very much.

All the expenses must not merely be reasonable. The term "expenses incurred in travel" is easily defined, but it is difficult to place limits upon the term "attendance." Certainly it can reasonably be held to include (1) many expenses, which might not be included under the word "actual" as construed by the accounting officers of the Government; (2) many expenses not incurred in attendance, but caused by attendance, and (3) the expenses are "not to exceed \$10 a day."

What light does this provision, taken in connection with the words "for travel and attendance," throw upon the true construction of the

words "reasonable expenses?" If a judge spends \$13 one day and \$7 another, shall he certify \$20 for the two days, or only \$10 for the one day and \$7 for the other, and \$17 in all?

Mr. McCUMBER. Mr. President, I rise to a point of order. I understand that by unanimous consent five hours has been given on each side of this question to take up the time of the Senate in a debate on its merits. Now, it seems to me that it is quite outside of that rule to debate a question upon its merits at this time.

I am as anxious as anyone at the proper time to hear what the learned counsel is stating, but I submit that the question, as it seems to me, that is now before the Senate, is whether or not the taking of certain fees by other judges is competent evidence to prove in this case or to justify the respondent in this case in receiving the same. That is one question. But as to whether or not that is the legal construction of that law is simply a question upon the merits, and it is not a question that reaches to the admissibility of this evidence. Under this proposition days and weeks could be taken in the discussion of the general question. It seems to me, therefore, Mr. President, that it is not in harmony with the agreement that has been entered into by unanimous consent that the merits should be discussed in the five-hour argument. I make that point of order.

Mr. HIGGINS. Mr. President, may I be allowed a word?

The PRESIDING OFFICER. The Presiding Officer does not feel competent to determine whether the method of argument pursued by counsel in support of his offer to introduce this testimony is in order or not. Rule XX provides:

XX. All preliminary or interlocutory questions, and all motions, shall be argued for not exceeding one hour on each side, unless the Senate shall, by order, extend the time.

No note has been taken of the time which has been consumed in this argument. The Presiding Officer will submit to the Senate any question that is raised.

Mr. McCUMBER. The point that I make, Mr. President, has no reference whatever to the time. I assume that a discussion upon an interlocutory matter means a discussion that is aimed directly at that matter. The matter here is not the question of the construction of that law, but the question of admissibility of certain evidence to establish another fact which becomes important, and that is the justification of the respondent to give it that construction.

The PRESIDING OFFICER. The Presiding Officer understood counsel to say that one object of introducing the proposed testimony was to show the contemporaneous construction of the statute by the executive officers of the Government—that is to say, that the executive officers of the Government have put upon this statute such a construction as counsel is now claiming for it. The Presiding Officer can not say that counsel is traveling outside of the question.

Mr. HIGGINS. Mr. President, you have aptly stated my contention, and the honorable Senator, I think, has not taken in the breadth of my contention. The course taken by the circuit and district judges, respectively, is one of the objects of offering the evidence.

Mr. DANIEL. Mr. President—

Mr. HIGGINS. I have not finished.

Mr. DANIEL. Very well.

Mr. HIGGINS. The other offer is to show how officers of the Government, one judge and five executive officers of the Government, acted on the certificates of all the judges—what construction was thus put by the executive officers upon it. So that on the one hand it is strictly the cotemporary construction of the executive officers, but upon the other it brings up a new, novel, and interesting question as to how far the action of the whole body of the bench constitute also cotemporaneous construction of this kind. Now I yield.

Mr. DANIEL. I rise to a point of order, Mr. President. The paper offered in evidence is not a proper paper for the purpose of showing any contemporaneous construction of the statute. As I understand it, what a judge claims as his expenses are paid on his certificate, and his certificate is conclusive that he claims that as his expense, and payments are made on that claim. What was paid to a particular judge has no reference whatsoever as to the falsity, integrity, or otherwise, of that claim, and is not a construction of what he had a right to claim. It simply passes upon the prima facie case that he himself makes, and the paper offered in evidence does not bear upon the point in favor of which it is offered. I make that point of order.

The PRESIDING OFFICER. Is there further argument by the managers or by counsel for the respondent?

Mr. Manager OLMSTED. I should like to add one word, briefly.

Mr. MALLORY. As I understand the rule, Mr. President, the respondent has an hour in which to discuss this point. I do not think the Senate can direct the counsel for respondent how he shall discuss it.

The PRESIDING OFFICER. That was the view of the Presiding Officer.

Mr. MALLORY. If he chooses to consume the whole hour it is our business to listen to him, I suppose.

The PRESIDING OFFICER. Counsel for respondent have one hour in which to discuss this matter. The Presiding Officer can not direct how he shall discuss it unless he travels so far out of the question as to make it apparent to everyone that he is outside.

Mr. HIGGINS. Well, Mr. President—

Mr. CULBERSON. Mr. President, I want to state a matter of inquiry, if it be in order. Counsel for respondent propose this testimony to show among other things the contemporaneous construction of this statute by the executive authorities. My inquiry is this: Whether this paper shows that a less sum per day was actually expended by any judge, and that with a knowledge of that fact the executive officers paid him \$10 a day?

Mr. HIGGINS. What is the last part of that question?

Mr. CULBERSON. Whether or not the fact was brought to the knowledge of the executive officers that the judge in each case had paid less than \$10 a day, and with a knowledge of that fact had paid a certificate at \$10 a day for such judge. Now, that would be a contemporaneous construction of the statute. What I arose to inquire was whether the certificate anywhere proposes testimony to that effect?

Mr. HIGGINS. Mr. President, my answer to that inquiry is a reference to the argument I have already endeavored to exhibit; that the knowledge of at least three of these officers is one that came to them from their belonging to the environment. The marshal, the district attorney, and the local judge who pass on the accounts are all cognizant of the facts and circumstances out of which the expenses arise, and

therefore must be held in all fairness to have knowledge of the facts. That is one answer.

But another is this, Mr. President: I do not care to disclose or to put before the Senate what these papers contain more than is involved in the necessity arising from the questions that are asked; but a comparison of the circuits will show that in, I know, three circuits the amounts certified are almost entirely under \$10, and in the balance they are almost invariably \$10. That is, the auditing officers of the Departments—the Department of Justice, the Treasury, and the Comptroller—had this comparison before their eyes all the time as to the construction placed upon this statute by judges in the different circuits, and therefore were put upon notice and inquiry with regard to it.

I had very nearly completed, Mr. President, the argument I was submitting about the fact that contemporary construction applies because the statute itself is one that is loosely drawn. If the words "not to exceed \$10 a day" are given a hard and fast interpretation, then it must be held to mean in the case to which I have already referred that it is not to exceed \$10 for any one day, and so in this instance supposed the judge would certify \$17 and lose \$3. That is, if he expended \$7 one day and \$13 another, he could only certify to the \$7 that he spent that day, and only \$10 for the day he spent \$13; but even the learned managers will not contend that that is the construction. Why? Because it is "for travel and attendance." Oh, they say, going about large districts, you have got to have traveling expenses, and a man will spend \$20 or \$30 a day sometimes in traveling and all that, but what becomes, then, of your construction that it is \$10 from day to day?

But, again, Mr. President, did the word "reasonable" mean an amount not as fixed by the judge's certificate, but as determined by the personal habits of the judge, and, indeed, the state of his health, or the individual limitations of his physical needs? Not all the justices, whether unhappily or not, be it said, come up to the proportions embalmed by Shakespeare in the phrase that will never die—

Some eat much, others little;
Some drink wine for the stomach's sake;
Others are total abstainers.

Did the statute contemplate that the judge, if with royal capacity he should eat and drink himself even with the Government up to \$10 a day, was a truly good man? But if with less capacity he was unequal to the task he should promptly be impeached as a scamp and a rogue—to be put down and out without benefit of clergy.

But light is shed upon the meaning of the words "reasonable expenses," as used in the act, by its provisions fixing who shall determine what expenses are reasonable.

That takes me to what I have already submitted, namely, a cotemporary construction, in which it is said that the amounts shall be allowed to the marshal in his accounts, and the sum on the certificate shall be paid by the marshal.

I assume again, in answer to the suggestion of the Senator from Virginia [Mr. Daniel], that it is by no means clear. On the contrary, I think it is clearly the other way; that under this act the certificate of the judge is conclusive; that is, that it is irrebuttable and irreversible,

because the statute makes it so. I submit to the Senate, as a most serious matter, that it is not irreversible where there is knowledge that a fraud has been committed; and I can add nothing to what I have already said as to the case where the district attorney, the marshal, and the judge all have knowledge of it.

Mr. President, not detaining the Senate longer on that, I appeal to a case that is higher authority, I submit, than the one cited by the learned manager from an impeachment trial in Massachusetts, and that is the case of the *United States v. Hill*, where the doctrine of cotemporary construction was applied to a statute nothing like as ambiguous and loosely drawn and uncertain as the one now under consideration here. That case was where a clerk of the district court of the United States for the district of Massachusetts had not returned in his emoluments his fees for naturalization papers.

After the elapse of twenty-odd years he and his bondsman were sued on his bond for the accumulated amount of fees.

It appeared from the statement on which the court below and the Supreme Court of the United States acted that it had been the practice in that court for the clerk not to return fees for naturalization papers in their emoluments for a period running over some fifty years. Not only so, but the judges passed upon the accounts of the clerk, and the auditors and Comptroller of the Treasury passed upon the accounts of the clerk. They had never been objected to. The Supreme Court held that this long repeated construction justified the clerk in taking those fees and constituted a contemporary construction of that statute by which the Supreme Court was bound.

Mr. President, I ought, in justice to my client and to this case, to ask the attention of the Senate to a scrutiny of the three sections of the act of Congress that were construed by the Supreme Court in that case, but I will not take up the time of the Senate to do it. It is enough to know that the statute was peremptory and without exception that the clerks should return every fee of every kind and every description, in the first section. In the second, that anything he got beyond thirty-five hundred dollars was to be paid into the Treasury, and under that section particular scrutiny was to be paid by the accounting officers whenever the emoluments exceeded thirty-five hundred. To that, in the case that came before the Supreme Court, was the oath of the clerk and the certificate of the judge. There was not one word in the statute which cast any doubt upon its affirmative character of requiring fees and emoluments of every kind to be returned.

But it so happened that the fee bill of 1853, as incorporated in the Revised Statutes—and every lawyer who has practiced in the Federal courts is familiar with the fee bill of 1853—did not include in it any reference whatever to the fees for naturalization, and although the statute which required the clerk to make his returns made no exception of any kind, the Supreme Court incorporated that exception into the statute because, as it said, that contemporary construction had been put upon it by the judge when he passed on the accounts and when the executive officers of the Treasury did afterwards.

Further than that, and aptly, in the case of *Follett v. Fitch* (145 New York Rep., Court of Appeals), decided March, 1895, there was in controversy a statute almost identical with this, and the court of

appeals of New York put the construction upon it that we are contending for here. That statute was:

Whenever any justice of the supreme court from any judicial district, other than the first judicial district, shall be designated as one of the justices of the general term in the first judicial department, he shall be paid by the city of New York such sum as shall be certified to be reasonable by the presiding justice of the first judicial department, not exceeding the sum of \$5,000 in any one year, as compensation for his expenses and disbursements in the performance of his duties under such designation.

Certain justices of the supreme court from judicial districts other than the first, during January, 1895, sat as justices of the general term in the first department.

The presiding justice of the first judicial department certified as to each of the relators that the sum of \$416.66 was a reasonable sum to be paid by the city of New York as compensation for his expenses and disbursements in the performance of his duties under such designation.

The court held that the allowance of \$416.66 for each of the judges was valid according to the clear and unmistakable language of the statute, and was not "compensation for services," but was compensation for expenses and disbursements.

I will ask to put in the record what the court said, without reading it.

The matter referred to is as follows:

By chapter 104, laws of 1893, in clear and unmistakable language, a scheme is created for reimbursing the expenses and disbursements of the justices of the supreme court designated to come from other judicial districts and sit in the general term of the first judicial department.

The mode prescribed for ascertaining from time to time the amount of these expenses and disbursements is judicious and proper.

Only such sums can be paid, within a named limit, as shall be certified to be reasonable by the presiding justice of the first judicial department.

It is true that this provision is subject to the criticism that the presiding justice is not made, in the technical sense, an auditing officer to pass upon actual items of disbursement, but the obvious answer is that it is competent for the legislature to allow its designated representative to certify such reasonable sum as shall be sufficient to reimburse the expenses and disbursements of the justices required to serve in the general term of the first judicial department.

The act of 1893 is not affected by article 6, section 14, of the constitution of 1846, as amended in 1867, for the reason that it does not assume to deal with compensation for services, nor does it tend in any way to disturb the policy that seeks to maintain uniformity of salary among judicial officers of the same grade.

The fact that a reasonable gross sum instead of items is certified to cover expenses and disbursements does not make it any the less compensation for that purpose, as it is only when these expenses and disbursements have been incurred that the presiding justice will be called upon to act.

We are of the opinion that the act in question is a proper and constitutional exercise of legislative power, and in line with the settled policy of the State and the practical construction given to similar legislation for more than a generation.

THE PRESIDING OFFICER. The Presiding Officer thinks counsel for the respondent have occupied an hour.

MR. HIGGINS. I have just arrived at the end of my time, Mr. President.

MR. MANAGER OLMSTED. Mr. President, if it is the desire to continue until 6 o'clock I will add what I have to say in a very few minutes. I might take advantage now to work in a very good argument on the merits of the proposition, but I think it is sufficient to come directly to the question of the admissibility of the evidence.

In the first place, the act itself does not vest any power or discretion in Judge Bryant, of the marshal, or anybody else except the judge who certifies, for it provides:

For reasonable expenses for travel and attendance of district judges directed to hold court outside of their districts, not to exceed \$10 per day each, to be paid on written certificates of the judges, and such payment shall be allowed the marshal in settlement of his account with the United States.

Provided the judge certified to a sum not to exceed \$10 a day, what marshal had the right to sit on the account? I would not like to be that marshal. He would have been in jail for contempt inside of thirty minutes. What judge had a right to pass upon it? What Treasury official had a right to pass upon it? No one. The judge makes a certificate as to his expenses, and if it does not exceed \$10 a day it is paid without question, and must be.

Now, in this offer of evidence there is not a word about the amount expended by any other judge. It is not pretended in there that any judge did not expend every dollar for which he was reimbursed by the Government. There is not anything in there about the construction of any official. We do not know whether their expenses exceeded \$10 or not. We only know they did not get more than \$10 for any one day.

Now, one word more about the absence of the seal from that paper. Of course, there is no seal on it, and it is not a question of waiting until to-morrow for them to get a seal on it. There can not be a seal on it. The Department can only put the seal on certified copies of papers or documents in the Department, which that is not. The act of Congress provides:

Copies of any books, records, papers, or documents in any of the Executive Departments authenticated under the seals of such Departments, respectively, shall be admitted in evidence equally with the originals thereof.

That is not a copy of any record or any document or any book. It is some figures taken off by somebody, and we do not know who, and it simply shows the amounts paid to the judges therein named. There is no insinuation, except by counsel, that any one of these honorable judges charged or certified to any amount in excess of his actual expenses. There is nothing upon which to base the insinuation that a judge, having expended two or three or five dollars a day, certified that the expenses were \$10 and collected the money from the Government.

Mr. President, I do not care to take the time of the Senate longer upon any proposition which seems to me so plain.

Mr. PATTERSON. Mr. President, I should like to ask the attorney for the respondent a question with reference to these statements from the Treasury Department. It is whether or not in nearly every instance wherein a judge has been allowed for a considerable number of attendances at different points and in the large majority of the cases he has been allowed \$10 a day, there are not some instances where he has been allowed less than \$10 per day. If that is the case, does it not tend to show that the judges discriminated in the presentation of the bills and the Department in the amounts that were paid? I have gone over all these papers that counsel have offered, and I find that is the case in nearly every instance. While a majority of the items of the

judges are \$10 a day in nearly every case, some items from some judges are far less than \$10 a day.

Mr. BACON. Mr. President, I did not desire to interrupt the learned Senator, and I would not now but for the fact that if questions such as the one he has propounded are in order there would be no end to this proceeding. I do not think the Senator can properly propound the inquiry.

The PRESIDING OFFICER. The order passed by the Senate was that there should be no colloquy between the managers and Senators, and the rule provides, the Presiding Officer thinks, that while a matter of this character is under discussion there shall be no debate by Senators.

Mr. BACON. That is in the nature of debate. I think the question of the Senator from Colorado—and it was on that ground that I made the objection—would lead to debate and is in the nature of debate.

The PRESIDING OFFICER. The hour of 6 o'clock has nearly arrived. The Presiding Officer proposes to submit this question to the Senate, either at this time or on the reassembling after recess.

Mr. SPOONER. It will be impossible to submit it in the few minutes that remain before 6 o'clock.

Mr. STEWART. Let us have a viva voce vote.

Mr. BACON. I should like to make an inquiry in order that I may be guided in my vote.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. BACON. I desire to know, in order that I may determine how to vote upon this question, whether it is proposed to follow with other evidence that judges have received less than the maximum amount.

Mr. THURSTON. I will state that we offer this testimony, claiming that by a careful analysis of the figures shown it will be obvious that running all through these accounts are many and many cases where the full amount was charged at places of the same character where Judge Swayne charged \$10 per diem, and that there are cases running all through here which by analysis will show that up to the time of the passage of the 1896 statute, when district judges were receiving only their actual expenditures, the same judges, under the same conditions and at the same places charged various sums—

Mr. NELSON. I make the point of order that we have had an hour's debate on the part of counsel for respondent.

Mr. BACON. I ask unanimous consent that we may take a vote on this matter before we adjourn.

Mr. STEWART. Yes; let us take a vote.

Mr. BACON. I ask unanimous consent that the time be extended.

The PRESIDING OFFICER. The Senator from Georgia asks unanimous consent that a vote may be taken as to the admission of this evidence before the recess commences.

Mr. SPOONER. I ask unanimous consent that the unanimous-consent agreement which was made, that we take a recess at 6 o'clock, be observed.

The PRESIDING OFFICER. The hour of 6 o'clock having arrived, the Senate sitting for the impeachment trial will take a recess until 8 o'clock, when it will resume its session in the impeachment trial and continue the same until 10 o'clock, unless otherwise ordered.

The managers on the part of the House and the respondent and his counsel thereupon retired from the Chamber.

EVENING SESSION.

Mr. PLATT, of Connecticut, assumed the chair.

The PRESIDING OFFICER (Mr. Platt, of Connecticut). The hour of 8 o'clock having arrived, the Senate resumes its session sitting for the trial of the impeachment of Charles Swayne.

The managers on the part of the House (with the exception of Mr. Clayton and Mr. Smith) entered the Chamber and took the seats assigned them.

Mr. Higgins and Mr. Thurston, the counsel for the respondent, entered the Chamber and took the seats assigned them.

Mr. ALLISON. Mr. President, I ask for a call of the Senate.

The PRESIDING OFFICER. The Secretary will call the roll.

The Secretary called the roll, and after some delay—

Mr. NELSON said: Mr. President, I would inquire if the Sergeant-at-Arms has been directed to send for the absentees?

The PRESIDING OFFICER. He has not.

Mr. NELSON. I move that the Sergeant-at-Arms be instructed to send for absentees. We have a right to have a quorum here.

The PRESIDING OFFICER. The result of the roll call will be announced.

The Secretary announced that the following Senators had answered to their names:

Alger, Allee, Allison, Bailey, Ball, Bard, Bate, Burnham, Burrows, Carmack, Clay, Cockrell, Crane, Culberson, Daniel, Dillingham, Dolliver, Fairbanks, Foraker, Foster of Washington, Gallinger, Gamble, Gibson, Heyburn, Kean, Kearns, Latimer, Long, McCumber, McEnery, McLaurin, Mallory, Martin, Nelson, Overman, Perkins, Pettus, Platt of Connecticut, Spooner, Stone, Taliaferro, Teller.

The PRESIDING OFFICER. Upon the call of the Senate 42 Senators have answered to their names. A quorum of the Senate sitting in the impeachment trial is not present.

Mr. NELSON. Now, Mr. President, I renew my motion that the Sergeant-at-Arms be directed to send for the absentees.

The PRESIDING OFFICER. The Senator from Minnesota moves that the Sergeant-at-Arms be directed to request the attendance of absent Senators. The question is on that motion.

The motion was agreed to.

The PRESIDING OFFICER. The Sergeant-at-Arms will send for the absent Senators, and the Secretary will call the roll of absentees.

The Secretary called the names of Messrs. Ankeny, Bacon, Berry, Beveridge, Blackburn, Clapp, Clark of Montana, Clark of Wyoming, Clarke of Arkansas, Cullom, Depew, Dick, Deitrich, Dryden, Dubois, Elkins, Foster of Louisiana, Frye, Fulton, Gorman, Hale, Hansbrough, Hopkins, Kittredge, Knox, Lodge, McComas, McCreary, Millard, Money, Morgan, Newlands, Patterson, Penrose, Platt of New York, Proctor, Quarles, Scott, Simmons, Smoot, Stewart, Warren, and Wetmore.

At 8 o'clock and 30 minutes p. m. Mr. Foster, of Louisiana, entered the Chamber, and answered to his name.

The PRESIDING OFFICER. A quorum of Senators who have been sworn in the impeachment trial is present—forty-three Senators.

Mr. GALLINGER. Mr. President, I move that further proceedings under the call be dispensed with.

The PRESIDING OFFICER. The Senator from New Hampshire moves that further proceedings under the call be dispensed with. The question is on that motion.

The motion was agreed to.

The PRESIDING OFFICER. At the conclusion of the session of the Senate sitting in the impeachment trial of Charles Swayne before the recess, the Presiding Officer was about to submit to the Senate the question regarding the admissibility of certain evidence. He will now submit that question to the Senate.

Counsel for the respondent offer to introduce a statement, certified by the Secretary of the Treasury as being a correct statement from the books of the Treasury, not, however, under seal. The statement is said to show amounts paid to United States circuit judges as expenses claimed while attending circuit courts of appeals away from their residences, and amounts paid to United States district judges as expenses claimed while holding court out of their own districts, or while attending circuit courts of appeals away from their residences. The question is, Shall this statement be admitted as evidence?

Mr. Manager OLMSTED. Mr. President, is it permissible to ask that as some Senators are now present who were not here when the objections were made that the objections be read at this time?

The PRESIDING OFFICER. The Presiding Officer has no means of knowing whether Senators are present now who were not present when the objections were made. The Presiding Officer will now put the question to the Senate, Shall the statement offered in evidence be admitted?

Mr. MALLORY. I ask for the yeas and nays on that, Mr. President.

The yeas and nays were ordered; and being taken, resulted—yeas 10, nays 34, as follows:

Yeas—Alger, Ball, Dolliver, Gallinger, Heyburn, Kearns, Long, McEnery, Perkins, Wetmore—10.

Nays—Allee, Allison, Bailey, Bard, Bate, Burnham, Burrows, Carmack, Clay, Cockrell, Crane, Culberson, Daniel, Dillingham, Fairbanks, Foraker, Foster of Louisiana, Foster of Washington, Gamble, Gibson, Kean, Latimer, McCumber, McLaurin, Mallory, Martin, Nelson, Overman, Pettus, Platt of Connecticut, Spooner, Stone, Taliaferro, Teller—34.

Not voting—Ankeny, Bacon, Berry, Beveridge, Blackburn, Clapp, Clark of Montana, Clark of Wyoming, Clarke of Arkansas, Cullom, Depew, Dick, Dietrich, Dryden, Dubois, Elkins, Frye, Fulton, Gorman, Hale, Hansbrough, Hopkins, Kittredge, Knox, Lodge, McComas, McCreary, Millard, Money, Morgan, Newlands, Patterson, Penrose, Platt of New York, Proctor, Quarles, Scott, Simmons, Smoot, Stewart, Warren—41.

The PRESIDING OFFICER. The evidence is not admitted.

Mr. TELLER. Do forty-four Senators make a quorum, Mr. President?

Mr. COCKRELL. A quorum of the court of impeachment.

The PRESIDING OFFICER. Forty-three Senators make a quorum of the Senators who have been sworn in the impeachment trial.

Mr. THURSTON. Mr. President, we offer and ask to have incorporated in the record the opinion of the three circuit judges of one circuit, construing the law under which articles 1, 2, and 3 are framed. To be perfectly fair, I will state that this is in the shape of a letter, and has been written recently. On the question of offering it I do not

care to state to whom it is addressed or what judges sign it, but I offer it as an opinion of those judges on this question. The date of it is February 6, 1905.

Mr. Manager PALMER. We object to this paper, first, because it does not prove any such thing as it is offered for, and, second, because it is not an instrument of evidence at any rate.

The PRESIDING OFFICER. The Presiding Officer thinks it is not admissible.

Mr. THURSTON. We offer, in addition thereto, similar opinions contained in letters of about the same date, signed by fifteen members of the Federal judiciary. They are all the same.

Mr. Manager PALMER. If they are similar—

The PRESIDING OFFICER. For what purpose?

Mr. THURSTON. For the same purpose that I offered the single letter.

The PRESIDING OFFICER. For what purpose?

Mr. THURSTON. For the purpose of showing the construction placed by these judges on the statute under which articles 1, 2, and 3 are framed.

Mr. SPOONER. I should like, through the Chair, to ask counsel to restate his offer.

Mr. THURSTON. Mr. President, I offered one letter signed by the three circuit judges of one circuit, and I now make the further offer of fifteen other letters, written by fifteen of the members of the Federal judiciary, which I claim contain opinions favorable to our contention in the matter of the construction of the law under which articles 1, 2, and 3 are drawn.

The PRESIDING OFFICER. The Presiding Officer does not see how a letter or letters written by judges to some party unknown are evidence to be considered in construing law.

Mr. TELLER. Mr. President, I have been under the impression for a good many years that a majority of this body—in this instance 46 Senators—made a quorum. I was somewhat surprised to find that a majority of the Senators sworn are held to be a quorum. I am not aware myself of any provision of the Constitution that allows this body to do business with less than a majority. You could not pass here a ten-dollar pension bill without a majority. Is it possible that less than a quorum can exercise the most important function that has been placed on the Senate by the Constitution? In my judgment, there is no court here present to-night. I raise that question.

The PRESIDING OFFICER. The Presiding Officer is of opinion that the point of order is well taken. He will state in this connection, however, that it has not been observed in proceedings of the Senate hitherto.

Mr. TELLER. I was not aware of that fact. I supposed there was always a quorum here. I presume we may, unless the record shows the contrary, assume that there has been a quorum present, but it is obvious here that there is not a quorum, both from the vote and the announcement of the Chair.

I do not make this point to delay or hinder. This is a vital question, and if there is not a quorum here we are absolutely without jurisdiction to proceed even in those things that are informal in their character. That must be the rule. If you can take the rule suggested, twenty-five men might be sworn, and then thirteen would be a quorum. It can not be possible. There is nothing in the Constitution that will

justify it. There is no power in this body to make less than a majority of the Senate a quorum at any time, and certainly if we can not legislate on unimportant matters without a quorum, we can not proceed in a case of this nature, where, whatever this case may be or whatever some other case might be, the rule might be applied to the President of the United States, who can be impeached by the House and tried by the Senate. In my judgment there must be a full quorum here, and however inconvenient it may be for us to wait for a quorum, I think we must wait for it.

Mr. NELSON. Mr. President, the last roll call disclosed that there was no quorum present, according to the decision of the Chair. I think we now have a quorum, three Senators having since come in. In order to test it, I move that the Sergeant-at-Arms be directed to send for the absentees. That will necessitate a roll call, which, I think, will disclose a quorum. I move that the Sergeant-at-Arms be directed to send for the absentees.

Mr. KEAN. Let the list of absentees be called.

Mr. GALLINGER. Mr. President, I make the point of no quorum.

The PRESIDING OFFICER. The Senator from New Hampshire suggests the point of no quorum. The Secretary will call the roll.

The Secretary called the roll, and the following Senators answered to their names:

Alger, Allee, Allison, Bailey, Ball, Bate, Beveridge, Burnham, Carmack, Clay, Cockrell, Crane, Culberson, Daniel, Dillingham, Dolliver, Fairbanks, Foraker, Foster of Louisiana, Foster of Washington, Frye, Gallinger, Gamble, Gibson, Heyburn, Kean, Kearns, Kittredge, Latimer, Long, McComas, McCumber, McEnery, McLaurin, Mallory, Martin, Nelson, Overman, Perkins, Pettus, Platt of Connecticut, Spooner, Stone, Tallaferro, Teller, Wetmore.

The PRESIDING OFFICER. On the call of the Senate forty-six Senators have answered to their names. A quorum is present.

The Presiding Officer thinks it becomes the duty of the Presiding Officer again to submit to the Senate the question with regard to the admission of evidence offered by counsel for respondent, which was submitted when a quorum of the Senate was not present, but when a quorum of the Senators sworn in the impeachment trial was present.

Counsel for the respondent offer in evidence certain statements of the Secretary of the Treasury, not under seal, purporting to show amounts paid to United States circuit judges as expenses claimed while attending circuit courts of appeals away from their residences, and amounts paid to United States district judges as expenses claimed while holding court out of their own districts or while attending circuit courts of appeals away from their residences.

The question is: Shall the statement referred to be admitted in evidence? [Putting the question.] The "noes" appear to have it. The "noes" have it, and the statement is not admissible.

Mr. THURSTON. Mr. President, I should like to have the reporter read my two previous offers, which I desire to remake in the same terms I did before, and let the ruling be had upon them.

The PRESIDING OFFICER. The reporter will read as requested.

The reporter read as follows:

Mr. THURSTON. Mr. President, we offer and ask to have incorporated in the record the opinion of the three circuit judges of one circuit, construing the law under which articles 1, 2, and 3 are framed. To be perfectly fair, I will state that this is in the

shape of a letter, and has been written recently. On the question of offering it, I do not care to state to whom it is addressed or what judges sign it, but I offer it as an opinion of those judges on this question. The date of it is February 6, 1905.

The PRESIDING OFFICER. The Presiding Officer will exclude that paper.

Mr. THURSTON. I ask to have my second offer read.

The reporter read as follows:

Mr. THURSTON. We offer in addition thereto similar opinions contained in letters of about the same date, signed by fifteen members of the Federal judiciary. They are all the same.

Mr. Manager PALMER. If they are similar—

The PRESIDING OFFICER. For what purpose?

Mr. THURSTON. For the same purpose that I offered the single letter.

The PRESIDING OFFICER. For what purpose?

Mr. THURSTON. For the purpose of showing the construction placed by these judges on the statute under which articles 1, 2, and 3 are framed.

The PRESIDING OFFICER. The Presiding Officer will exclude those papers.

Mr. THURSTON. Mr. President, that closes the case on behalf of the respondent.

The PRESIDING OFFICER. Are there any witnesses in rebuttal?

Mr. Manager PALMER. There will be very little rebutting testimony; one or two questions only of one or two witnesses. Call Mr. Davis.

E. T. DAVIS recalled.

By Mr. Manager DE ARMOND:

Q. Mr. Davis, state whether or not during the week in November ending with Saturday, the 9th, you were in consultation with Mr. Paquet about the getting of witnesses, and whether or not you would be prepared for the trial of the Florida McGuire case at any time when Mr. Blount was present, and talked with Paquet also about the same matter.—A. I was not.

Q. State whether or not you had any consultation with Paquet about the time of that case coming to trial or concerning any other matter about the case.—A. None whatever.

Q. State what, if anything, you had to do about the matter of taxing or retaxing costs in the case which you had dismissed as a matter of accommodation to Paquet and Belden.—A. Some time afterwards, after the contempt proceeding and the discontinuance of the case, I received a letter from Mr. Belden. As well as I remember, he stated that Mr. Pryor had received some notice of a demand for the costs in the case, and he asked me to go over it, as there were some of the costs which he thought ought to be corrected. I prepared the application to correct the costs in the case and submitted it to Judge Swayne.

Q. That was the amount of your connection with that matter?—A. Yes, sir.

Q. And the occasion of it?—A. Yes, sir.

Q. State whether or not while Mr. Paquet, on Saturday evening, was arguing or urging the postponement of the Florida McGuire case until the succeeding Thursday you said anything to Mr. Marsh about you or about the attorneys or about the party plaintiff in the Florida McGuire case being unable to get their witnesses and to be ready for trial Monday morning.—A. I said nothing to him whatever.

Q. State whether you had any conversation with Mr. Marsh upon the subject.—A. I did not.

Q. State whether Mr. Marsh made a statement to you that evening to the effect that he would remain in his office as long as you desired and would get out summonses for such witnesses as you might want.—A. He did not.

Q. And did you say to him that you would see about it?—A. I did not.

Q. Did you then go and consult, or appear to consult, Mr. Paquet about the matter and have this conversation with him?—A. I did not.

Mr. Manager DE ARMOND. That is all.

Cross-examined by Mr. HIGGINS:

Q. Mr. Davis, did you say that you got this instruction about paying the cost tax from Mr. Paquet?—A. No, sir; it was from Mr. Belden, I think it was.

Q. This was in the case that you had moved for its discontinuance?—A. Yes, sir.

Q. You had your name entered of record?—A. That is true.

Q. Were you not acting as counsel of record at the time you had the costs taxed?—A. No further than—

Q. Answer my question.—A. No further than my previous connection with the case, that the discontinuance of that case was a matter of favor to Mr. Paquet and Mr. Belden, and in this it was a matter of favor to General Belden, as he lived in New Orleans.

Q. I will ask you again if you were not acting as counsel of record?—A. Not in the way that you ask it, I do not think. I think I have stated.

Q. You were counsel of record?—A. Yes, sir.

Q. And you did apply to have the costs taxed?—A. Yes, sir; I did that.

Q. (Producing paper.) Will you look on this paper and say whether or not it was signed by you?—A. (Examining.) Yes, sir; that is true.

Q. Whose handwriting is that?—A. It is mine.

Q. Whose handwriting is the name Simeon Belden?—A. That is my handwriting.

Q. Both?—A. Yes, sir.

Q. Who prepared this paper?—A. I think that I prepared it.

Q. Then it did not come from New Orleans?—A. No, sir; I prepared the papers in the case so far as Paquet.

Q. (Producing paper.) Look at that paper and see whether it is in your handwriting?—A. (Examining.) Yes, sir; that is my handwriting.

Q. These papers speak for themselves, though?—A. Yes, sir.

Mr. Manager PALMER. They are about retaxing costs?

Mr. HIGGINS. Yes, sir.

Mr. Manager PALMER. All right; offer them in evidence.

Mr. HIGGINS. Mr. President, we offer in evidence a paper which I will ask the Secretary to read.

The PRESIDING OFFICER. The Secretary will read it if there be no objection.

The Secretary read as follows:

United States circuit court, northern district of Florida. *Florida McGuire v. Pensacola City Company et al.*

On motion of Simeon Belden and E. T. Davis, attorneys of Florida McGuire, plaintiff in the above-entitled suit, and on suggesting that on Monday, the 23d of December, 1901, the clerk of said court, F. W. Marsh, after due notice to said attorneys, and who were present, taxed costs against plaintiff in said suit and her sureties for costs as shown by accompanying bill of costs, made part of this motion. And on further suggesting that they believe that there is error to the prejudice of said plaintiff in charging and entering costs in favor of R. L. Scarlett, who was not summoned as a witness and did not testify in said case, and that said costs are not due him.

And further, that there is an overcharge in the item charged as due said clerk of \$30 for final record of said case, for the reason that there are not 200 folios in said final record—being as erroneously charged 20,000 words at folios of 100 words—and second, because the 20,000 words recorded embrace papers and documents not required to be recorded as final records of the suit. For these reasons said attorneys move for an appeal to the presiding judge of said circuit court for review of said findings and entry of said costs above stated, that the said findings and entry may be reviewed and corrected.

SIMEON BELDEN
and E. T. DAVIS,
Plaintiff's Attorneys.

(Indorsement: *Florida McGuire v. Pensacola City Company. Appeal from taxation of costs. Filed at — o'clock a. m., December 26, 1901. F. W. Marsh, clerk.*)

Q. (By Mr. HIGGINS.) Mr. Davis, was that appeal argued?—A. Yes, sir.

Q. By whom on behalf of the plaintiff?—A. By myself and Mr. Blount.

Q. So you took the appeal and you argued it?—A. Yes, sir.

Mr. HIGGINS. That will do, sir.

Mr. Manager PALMER. There is another witness. I call Mr. Pryor.

Mr. HIGGINS. There is another paper here, the substance of the other, and I will not offer it.

The PRESIDING OFFICER. Does the Presiding Officer understand that counsel for the respondent has another question to ask this witness?

Mr. HIGGINS. Not any.

GEORGE W. PRYOR sworn and examined.

By Mr. Manager DE ARMOND:

Q. Where do you live?—A. Pensacola, Fla.

Q. Do you know Mr. Paquet?—A. Yes, sir.

Q. Do you know Mr. Davis and Mr. Belden?—A. Yes, sir.

Q. Do you know the editor of the Press?—A. Well, yes, sir.

Q. State whether or not you took a paper to that office Saturday night, the 9th of November, 1901.—A. I did, sir.

Q. Who gave that paper to you?—A. Judge Paquet.

Q. About what time?—A. It was right about 10 o'clock at night.

Q. What did you do with the paper?—A. I handed it to Mr. Barker.

Q. Did you know the contents of the paper?—A. I did not, sir.

Q. Do you know whether Mr. Belden or Mr. Davis had anything to do with it or knew anything about it?—A. I do not think they did.

Mr. HIGGINS. We object to what he thinks. The witness should speak of his own knowledge and what he knows.

Mr. Manager DE ARMOND. I ask the reporter to read the last question to the witness.

The reporter read as follows:

Q. Do you know whether Mr. Belden or Mr. Davis had anything to do with it or knew anything about it?

A. I do not.

Q. (By Mr. Manager DE ARMOND.) Do you know of their knowing anything about it or having anything to do with it?—A. I do not, sir.

Q. Do you know how Mr. Davis came to appear for the plaintiffs in the Florida McGuire case in the retaxing of costs?—A. Well, I did not know; no, sir.

Q. Did you have any communication with Mr. Belden about the matter?—A. No, sir.

Q. When was Mr. Davis employed in the Florida McGuire case?—A. It was along about March, 1902.

Q. Along in the spring of 1902?—A. Yes, sir.

Q. Was he employed in that case before that time?—A. No, sir; he was not.

Q. Was it at your store that some of these gentlemen met the night when suit was brought against Judge Swayne?—A. Yes, sir; they met there; that is, Mr. Davis was sent for by Judge Paquet.

Q. You were concerned for the plaintiffs in that suit?—A. Yes, sir.

Q. That is the reason why you knew about the employment of the attorney?—A. Yes, sir.

Q. You paid the costs to the clerk, Mr. Marsh?—A. Yes, sir.

Mr. Manager PALMER. That is all. That is our case.

Mr. THURSTON. That is all.

Mr. Manager PALMER. Excuse me a moment. I have another witness.

Mr. Manager OLMSTED. Mr. President, I desire to offer the following extract from the Congressional Record of April 24, 1896, being debates upon the bill providing for the expenses of salaries, and I will ask to have it read. It is not long.

The PRESIDING OFFICER. It bears upon the same question as to which evidence was admitted in behalf of the respondent.

Mr. Manager OLMSTED. The same question and the same bill.

The PRESIDING OFFICER. It will be read.

The Secretary read as follows:

Mr. ALLEN. This bill provides: "That no such person shall be employed during vacation; of reasonable expenses for travel and attendance of district judges directed to hold court outside of their districts, not to exceed \$10 per day each, to be paid on written certificates of the judges."

There is a maximum fixed. There may be days when \$10 would be required to cover the expenses of the judge, and it would be perfectly proper for him to draw that sum and certify to it; but I submit that it is improper and in violation of the spirit, if not of the language, of the statute that the judge, simply because he has the power to certify, will be enabled to take from the Treasury of the United States \$10 for every day to cover his expenses when his actual expenses do not exceed four or five dollars a day.

It may be a small item; probably it is a small item; but it is not small in so far as it develops a disposition upon the part of high judicial officers of the country to violate the spirit of a law which they themselves are engaged in enforcing against criminals and other violators of the law.

Mr. CHANDLER. Will the Senator from Nebraska allow me to interrupt him?

Mr. ALLEN. Certainly.

Mr. CHANDLER. The provision is that the judge shall be paid his reasonable expenses for travel and attendance, not to exceed \$10 a day. The judge of a United States court has to certify that that is an expense; that that is what he has paid out. Does the Senator mean to say that there is a judge anywhere in the United States

holding court in that way who, if his expenses were \$7 or \$8 or \$5 a day, would certify that they were \$10 in order to get the additional money?

* * * * *

Mr. ALLISON. The Senator from Nebraska will observe that the only object of this provision is to place the district judges upon an equality with circuit judges as respects their expenses.

Mr. ALLEN. Yes, sir; I observe that they are put upon an equality. What I am contending for, and what I hope the honorable Senator from Iowa will remedy, is that these men shall not be permitted to violate the law themselves.

Mr. ALLISON. Does the Senator believe that any district judge or circuit judge is likely to violate the law by making a false certificate? The Senator must remember that this includes all traveling expenses as well as expenses while at the place of holding court.

Mr. ALLEN. I hope the Senator from Iowa will not put me in the attitude of making the charge that all Federal judges violate the law, for I do not make it.

Mr. ALLISON. I certainly would not put the Senator in any such attitude.

Mr. ALLEN. I say some of them do, according to my information. A judge is a human being. He is no more of a man after he becomes a judge than he was at the time he became a judge. If he had frailties at that time, he carries them to the bench with him.

The proposed statute fixed the maximum in these words:

"Of reasonable expenses for travel and attendance of district judges directed to hold court outside of their districts, not to exceed \$10 per day each, to be paid on written certificates of the judges."

That carries the implication, which is as clear as language can make it, that he shall not receive \$10 a day unless his actual expenses amount to \$10 a day.

Mr. GRAY. His reasonable expenses.

Mr. ALLEN. His reasonable expenses. Reasonable expenses include hotel bill and railroad fare. I do not suppose it includes the purchase of a new suit of clothes or a box of cigars, but the reasonable, ordinary expenses of travel, including hotel bills.

Mr. Manager OLMSTED. I offer from the Congressional Record of January 27, 1903, the same date, I think, as that which formed the subject of what the honorable counsel for the respondent offered.

The PRESIDING OFFICER. Relating to the same subject?

Mr. Manager OLMSTED. Relating to the same subject, and being a part of the Record which the honorable counsel for the respondent offered to-day. This debate occurred upon the passage of the bill fixing the salaries of Federal judges, the bill which increased their salaries and which is the law to-day. I will read myself a line or two. This is the Record:

The Clerk read as follows:

"That from and after the passage of this act no payment shall be made to any of the judges mentioned in this act for expenses."

Now, I offer this extract showing what followed.

Mr. HIGGINS. Of the same date?

Mr. Manager OLMSTED. The same date, following immediately after what I have read.

The Secretary read as follows:

Mr. OLMSTED. Mr. Speaker, I move to strike out the paragraph just read. * * * No judge would feel like going out of his own district to hold court at his own expense. The law does not give him extra pay for that extra service, but he ought to be reimbursed for his actual and reasonable expenses.

The salaries paid are not large enough to warrant Federal judges in going out of their own districts at their own expense. * * * My amendment, however, does not deal with salaries, but with expenses, and I hope that it may be adopted.

The SPEAKER. The question is on the motion of the gentleman from Pennsylvania.

The question was taken; and on a division (demanded by Mr. Smith, of Kentucky) there were—ayes 80, noes 69.

So the motion was agreed to.

Mr. Manager OLMSTED. Now, Mr. President, I offer the entire Congressional Record of that session simply for the purpose of showing

that there was no other debate whatever in either Chamber upon that amendment and upon that provision.

The PRESIDING OFFICER. Is that agreed to by counsel for the respondent?

Mr. HIGGINS. To print the whole Record?

The PRESIDING OFFICER. No; that there was no other debate.

Mr. THURSTON. We have no objection, Mr. President, that counsel upon the other side may make their statements that there was no other debate, and unless in an examination we find that statement to be incorrect by some omission of theirs it can go as the fact.

Mr. Manager OLMSTED. That is entirely satisfactory; and, Mr. President, I make the statement as the result of a very careful examination that that is absolutely the last utterance upon that subject in either branch of Congress.

The PRESIDING OFFICER. That makes it unnecessary to offer the whole Record?

Mr. Manager OLMSTED. Yes, sir.

Mr. Manager PALMER. We rest our case, Mr. President, and I submit a brief of authorities—

The PRESIDING OFFICER. One moment. A short time ago the Presiding Officer stated that he thought in this trial there had been a call of the Senate and that business had been conducted when there was less than a quorum of the Senate. He finds upon examination that he was mistaken, and that on the two occasions when the roll call was had to determine the existence of a quorum there was on each occasion a quorum of the Senate present.

Mr. Manager PALMER. Mr. President, I submit a brief of authorities on the law of impeachment in answer to the brief that has been already filed, and ask that it be printed under the permission given this morning.

Mr. FORAKER. I rise to inquire how it comes that a reference showing the debates in regard to these amendments in the House has been put in evidence. Is it without objection? Unless it be without objection, I do not understand how it is competent under the rule made by the Senate when counsel for the respondent offered to place it in testimony.

The PRESIDING OFFICER. Extracts from the Congressional Record were offered in evidence by counsel for the respondent; the question was submitted to the Senate, and a vote taken by which they were admitted. I believe that is so.

Mr. FORAKER. I was under a misapprehension.

The PRESIDING OFFICER. Then the managers offered similar extracts from the Congressional Record, which were admitted without the question being submitted to the Senate.

Mr. Manager PALMER. I offer the brief of authorities on the law of impeachment. I submit it to be printed in the Record under the permission which was given this day. I wish to state, in connection therewith, that it has been hastily prepared, as we only saw the brief of the respondent's counsel yesterday. The brief which I submit has been largely borrowed from other briefs that have been used in other impeachment trials, but I do not think that fact will detract any from its value.

The PRESIDING OFFICER. The manager offers for printing in the Record a brief in reply to the brief furnished by counsel for the

respondent relating to the law of impeachments, and asks that it may be printed in the Record as the brief of counsel for the respondent was printed. Is there objection? The Chair hears none, and the brief will be printed in the Record.

The brief referred to is as follows:

A BRIEF OF AUTHORITIES ON THE LAWS OF IMPEACHMENT.

The purpose of this brief is to show--

First. That the framers of the Constitution intended that the House of Representatives should have the right to impeach and the Senate the power to try a judicial officer for any misbehavior that showed disqualification to hold and exercise the office, whether moral, intellectual, or physical.

The provisions of the Constitution relating to the subject of impeachment are as follows:

The House of Representatives shall choose their Speaker and other officers, and shall have the sole power of impeachment. (Art. I, sec. 2.)

Judgment in cases of impeachment shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the United States; but the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment, and punishment according to law. (Art. II, sec. 1.)

The President * * * shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment. (Art. II, sec. 2.)

The President, Vice-President, and all civil officers of the United States shall be removed from office on impeachment for, and conviction of, treason, bribery, and other high crimes and misdemeanors. (Art. II, sec. 4.)

The trial of all crimes, except in cases of impeachment, shall be by jury. (Art. III, sec. 2.)

The convention that framed the Constitution did not define words, but used them in the sense in which they were understood at that time.

The convention did not invent the remedy by impeachment, but adopted a well-known and frequently used method of getting rid of objectionable public officers, modifying it to suit the conditions of a new country.

In England all the King's subjects were liable to impeachment for any offense against the sovereign or the law. Floyd was impeached for speaking lightly of the Elector Palatine and sentenced to ride on horseback for two successive days through certain public streets with his face to the horse's tail, with the tail in his hands; to stand each day two hours in pillory; to be pelted by the mob, then to be branded with the letter "K" and be imprisoned for life in the Tower. The character and extent of the punishment was in the discretion of the House of Lords.

The Constitution modified the remedy by confining it to the President, Vice-President, and all civil officers, and the punishment to removal from office and disqualification to hold office in future.

That it was not intended as a punishment of crime clearly appears when we read that a party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment according to law.

Said Mr. Bayard in Blount's trial:

Impeachment is a proceeding of a purely political nature. It is not so much designed to punish the offender as to secure the State. It touches neither his person nor his property, but simply divests him of his political capacity. (Wharton's State Trials, 263.)

Subject to these modifications and adopting the recognized rule, the Constitution should be construed so as to be equal to every occasion which might call for its exercise and adequate to accomplish the purposes of its framers. Impeachment remains here as it was recognized in England at and prior to the adoption of the Constitution.

These limitations were imposed in view of the abuses of the power of impeachment in English history.

These abuses were not guarded against in our Constitution by limiting, defining, or reducing impeachable crimes, since the same necessity existed here as in England for the remedy of impeachment, but by other safeguards thrown around it in that instrument. It will be observed that the sole power of impeachment is conferred on the House and the sole power of trial on the Senate by Article 1, sections 2 and 3. These are the only jurisdictional clauses, and they do not limit impeachment to crimes and misdemeanors. Nor is it elsewhere so limited. Section 4 of Article II makes it imperative when the President, Vice-President, and all civil officers are convicted of treason, bribery, or other high crimes and misdemeanors that they shall be removed from office. There may be cases appropriate for the exercise of the power of impeachment where no crime or misdemeanor has been committed.

Whatever crimes and misdemeanors were the subjects of impeachment in England prior to the adoption of our Constitution, and as understood by its framers, are, therefore, subjects of impeachment before the Senate of the United States, subject only to the limitations of the Constitution.

"The framers of our Constitution, looking to the impeachment trials in England, and to the writers on parliamentary and common law, and to the constitutions and usages of our own States, saw that no act of Parliament or of any State legislature ever undertook to define an impeachable crime. They saw that the whole system of crimes, as defined in acts of Parliament and as recognized at common law, was prescribed for and adapted to the ordinary courts." (2 Hale, Pl. Crown, ch. 20, p. 150; 6 Howell State Trials, 313, note.)

They saw that the high court of impeachment took jurisdiction of cases where no indictable crime had been committed, in many instances, and there was then, as there yet are, two parallel modes of reaching some, but not all offenders—one by impeachment, the other by indictment.

With these landmarks to guide them, our fathers adopted a Constitution under which official malfeasance and nonfeasance, and in some cases misfeasance, may be the subject of impeachment, although not made criminal by act of Congress, or so recognized by the common law of England or of any State of the Union. They adopted impeachment as a means of removing men from office whose misconduct imperils the public safety and renders them unfit to occupy official position. All American text writers support this view.

[Story on the Constitution, p. 583.]

Congress have unhesitatingly adopted the conclusion that no previous statute is necessary to authorize an impeachment for any official misconduct; and the rules of proceeding and the rules of evidence, as well as the principles of decision, have been uniformly regulated by the known doctrines of the common law and parliamentary usage. In the few cases of impeachment which have hitherto been tried no one of the charges has rested upon any statutable misdemeanors.

It seems, then, to be the settled doctrine of the high court of impeachment that, though the common law can not be a foundation of a jurisdiction not given by the Constitution or laws, that jurisdiction, when given, attaches, and is to be exercised according to the rules of the common law, and that what are and what are not high crimes and misdemeanors is to be ascertained by a recurrence to that great basis of American jurisprudence. The reasoning by which the power of the House of Representatives to punish for contempts (which are breaches of privileges and offenses not defined by any positive laws) has been upheld by the Supreme Court stands upon similar grounds; for if the House had no jurisdiction to punish for contempts until the acts had been previously defined and ascertained by positive law, it is clear that the process of arrest would be illegal.

In examining the parliamentary history of impeachments it will be found that many offenses, not easily definable by law, and many of a purely political character, have been deemed high crimes and misdemeanors worthy of this extraordinary remedy. Thus lord chancellors, and judges, and other magistrates have not only been impeached for bribery and acting grossly contrary to the duties of their offices, but for misleading their sovereign by unconstitutional opinions, and for attempts to subvert the fundamental laws and introduce arbitrary power.

So where a lord chancellor has been thought to have put the great seal to an ignominious treaty, a lord admiral to have neglected the safeguard of the sea, an ambassador to have betrayed his trust, a privy councilor to have propounded or supported pernicious and dishonorable measures, or a confidential advisor of his sovereign to have obtained exorbitant grants or incompatible employments—these have been all deemed impeachable offenses. Some of these offenses, indeed, for which persons were impeached in the early ages of British jurisprudence would now seem harsh and severe; but perhaps they were rendered necessary by existing corruptions and the importance of suppressing a spirit of favoritism and court intrigue.

Thus persons have been impeached for giving bad counsel to the King, advising a prejudicial peace, enticing the King to act against the advice of Parliament, purchasing offices, giving medicine to the King without advice of physicians, preventing other persons from giving counsel to the King except in their presence, and procuring exorbitant personal grants from the King. But others, again, were founded in the most salutary public justice, such as impeachments for malversations and neglects in office, for encouraging pirates, for official oppression, extortions, and deceits, and especially for putting good magistrates out of office and advancing bad. One can not but be struck, in this slight enumeration, with the utter unfitness of the common tribunals of justice to take cognizance of such offenses, and with the entire propriety of confiding the jurisdiction over them to a tribunal capable of understanding and reforming and scrutinizing the policy of the state, and of sufficient dignity to maintain the independence and reputation of worthy public officers.

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The other point is one of more difficulty. In the argument upon Blount's impeachment it was pressed with great earnestness, while there is not a syllable in the Constitution which confines impeachments to official acts, and it is against the plainest dictates of common sense that such restraint should be imposed upon it. Suppose a judge should countenance or aid insurgents in a meditated conspiracy or insurrection against the Government. This is not a judicial act, and yet it ought certainly to be impeachable. He may be called upon to try the very persons whom he has aided. Suppose a judge or other officer to receive a bribe not connected with his judicial office, could he be entitled to any public confidence? Would not these reasons for his removal be just as strong as if it were a case of an official bribe? The argument on the other side was that the power of impeachment was strictly confined to civil officers of the United States, and this necessarily implied that it must be limited to malconduct in office.

[American and English Encyclopædia of Law, Vol. XV, p. 1066.]

In the United States.—The Constitution of the United States provides that the President, Vice-President, and all civil officers of the United States shall be removed from office on impeachment for and conviction of treason, bribery, or other high crimes and misdemeanors. If impeachment in England be regarded merely as a mode of trial for the punishment of common law or statutory crimes, and if the Constitution has adopted it only as a mode of procedure, leaving the crimes to which it is to be applied to be settled by the general rules of criminal law, then, as it is well settled that in regard to the National Government there are no common-law crimes, it would

seem necessarily to follow that impeachment can be instituted only for crimes specifically named in the Constitution or for offenses declared to be crimes by Federal statute. This view has been maintained by very eminent authority. But the cases of impeachment that have been brought under the Constitution would seem to give to the remedy a much wider scope than the above rule would indicate.

In each of the only two cases of impeachment tried by the Senate in which a conviction resulted the defendant was found guilty of offenses not indictable either at common law or under any Federal statute, and in almost every case brought offenses were charged in the articles of impeachment which were not indictable under any Federal statute, and in several cases they were such as constituted neither a statutory nor a common-law crime. The impeachability of the offenses charged in the articles was, in most of the cases, not denied. In one case, however, counsel for the defendant insisted that impeachment would not lie for any but an indictable offense, but after exhaustive argument on both sides this defense was practically abandoned.

The cases, then, seem to establish that impeachment is not a mere mode of procedure for the punishment of indictable crimes; that the phrase "high crimes and misdemeanors" is to be taken, not in its common-law, but in its broader parliamentary sense, and is to be interpreted in the light of parliamentary usage; that in this sense it includes not only crimes for which an indictment may be brought, but grave political offenses, corruptions, maladministration, or neglect of duty involving moral turpitude, arbitrary and oppressive conduct, and even gross improprieties, by judges and high officers of state, although such offenses be not of a character to render the offender liable to an indictment either at common law or under any statute. Additional weight is added to this interpretation of the Constitution by the opinions of eminent writers on constitutional and parliamentary law and by the fact that some of the most distinguished members of the convention that framed it have thus interpreted it.

[Rawle on the Constitution, p. 210.]

Impeachments are thus introduced as a known definite term, and we must have recourse to the common law of England for the definition of them.

In England the practice of impeachments by the House of Commons before the House of Lords has existed from very ancient times. Its foundation is that a subject intrusted with the administration of public affairs may sometimes infringe the rights of the people and be guilty of such crimes as the ordinary magistrates either dare not or can not punish. Of these, the representatives of the people, or House of Commons, can not judge, because they and their constituents are the persons injured, and can therefore only accuse. But the ordinary tribunals would naturally be swayed by the authority of so powerful an accuser. That branch of the legislature which represents the people, therefore, brings the charge before the other branch, which consists of the nobility, who are said not to have the same interests or the same passions as the popular assembly.

The delegation of important trusts, affecting the higher interests of society, is always from various causes liable to abuse. The fondness frequently felt for the inordinate extension of power, the influence of party and of prejudice, the seductions of foreign states, or the basest appetite for illegitimate emoluments are sometimes productive of what are not inaptly termed political offenses, which it would be difficult to take cognizance of in the ordinary course of judicial proceedings.

[Cushing's Law and Practice of Legislative Assemblies, p. 980, par. 2539.]

The purpose of impeachment in modern times is the prosecution and punishment of high crimes and misdemeanors, chiefly of an official or political character, which are either beyond the reach of the law, or which no other authority in the State but the supreme legislative power is competent to prosecute; and by the law of Parliament all persons, whether peers or commoners, may be impeached for any crimes or offenses whatever.

[Trial of Judge Peck, p. 427. Mr. Buchanan's argument.]

What is an impeachable offense? This is a preliminary question which demands attention. It must be decided before the court can rightly understand what it is they have to try. The Constitution of the United States declares the tenure of the judicial office to be "during good behavior." Official misbehavior, therefore, in a judge is a forfeiture of his office. But when we say this we have advanced only a small distance. Another question meets us. What is misbehavior in office? In answer to this question, and without pretending to furnish a definition, I freely admit

we are bound to prove that the respondent has violated the Constitution or some known law of the land. This, I think, was the principle fairly to be deduced from all the arguments on the trial of Judge Chase, and from the votes of the Senate in the articles of impeachment against him, in opposition to the principle for which his counsel in the first instance strenuously contended, that in order to render an offense impeachable it must be indictable. But this violation of law may consist in the abuse as well as in the usurpation of authority.

The abuse of a power which has been given may be as criminal as the usurpation of a power which has not been granted. Can there be any doubt of this? Suppose a man to be indicted for an assault and battery. He is tried and found guilty, and the judge, without any circumstances of peculiar aggravation having been shown, fines him a thousand dollars and commits him to prison for one year. Now, although the judge may possess the power to fine and imprison for this offense, at his discretion, would not this punishment be such an abuse of judicial discretion and afford such evidence of the tyrannical and arbitrary exercise of power as would justify the House of Representatives in voting an impeachment? But why need I fancy cases? Can fancy imagine a stronger case than is now, in point of fact, before us?

A member of the bar is brought before a court of the United States, guilty, if you please, of having published a libel on the judge—a libel, however, perfectly decorous in its terms and imputing no criminal intention, and so difficult of construction that though the counsel of the respondent have labored for hours to prove it to be a libel, still that question remains doubtful. If in this case the judge has degraded the author by imprisonment and deprived him of the means of earning bread for himself and family by suspending him from the practice of his profession for eighteen months, would not this be a cruel and oppressive abuse of authority, even admitting the power to punish in such a case to be possessed by the judge?

A gross abuse of granted power and an usurpation of power not granted are offenses equally worthy of and liable to impeachment. If, therefore, the gentleman could establish, on the firmest foundation, that the power to punish libels as contempts may be legally exercised by all the courts of the United States, still he would not have proceeded far toward the acquittal of his client.

It has been contended that even supposing the judge to have transcended his power and violated the law, yet he can not be convicted unless the Senate should believe he did the act with a criminal intention. It has been said that crime consists in two things, a fact and an intention; and in support of this proposition the legal maxim has been quoted that "*actus non fit reum, nisi mens rea.*" This may be true as a general proposition, and yet it may have but a slight bearing upon the present case.

I admit that if the charge against a judge be merely an illegal decision on a question of property in a civil cause, his error ought to be gross and palpable, indeed, to justify the interference of a criminal intention and to convict him upon an impeachment. And yet one case of this character has occurred in our history. Judge Pickering was tried and condemned upon all the four articles exhibited against him, although the three first contained no other charge than that of making decisions contrary to law in a cause involving a mere question of property, and then refusing to grant the party injured an appeal from his decision, to which he was entitled.

And yet I am to be told that if a judge shall do an act which is in itself criminal; if he shall, in an arbitrary and oppressive manner and without the authority of law, imprison a citizen of this country, and thus consign him to infamy, you are not to infer his intention from the act.

[Judge Spencer's argument, p. 290.]

It is necessary to a right understanding of the impeachment to ascertain and define what offenses constitute judicial misdemeanors. A judicial misdemeanor consists, in my opinion, in doing an illegal act *colore officii* with bad motives, or in doing an act within the competency of the court or judge in some cases, but unwarranted in a particular case from the facts existing in that case, with bad motives. To illustrate the last proposition: The eighth article of the amendments of the Constitution forbids the requirement of excessive bail, the imposition of excessive fines, or the infliction of cruel or unusual punishment. If a judge should disregard these provisions, and from bad motives violate them, his offense would consist, not in the want of power, but in the manner of his executing an authority intrusted to him and for exceeding a just and lawful discretion.

[Mr. Wickliffe's argument, p. 308.]

By the third article of the Constitution of the United States it is declared that the judges of the supreme and inferior courts shall hold their office during good behavior.

I maintain the proposition that any official act committed or omitted by the judge, which is a violation of the condition upon which he holds his office, is an impeachable offense under the Constitution.

The word misdemeanor, used in its parliamentary sense as applied to offenses, means maladministration, misconduct not necessarily indictable, not only in England, but in the United States.

"In the Senate, July 8, 1797, it was resolved that William Blount, esq., one of the Senators of the United States, having been guilty of a high misdemeanor, entirely inconsistent with his public trust and duty as a Senator, be, and he hereby is, expelled from the Senate of the United States." (Wharton's State Trials, 202.)

He was not guilty of an indictable crime. (Story on the Constitution, sec. 799, note.)

The offense charged, Judge Story remarks, was not defined by any statute of the United States. It was an attempt to seduce a United States Indian interpreter from his duty, and to alienate the affections and conduct of the Indians from the public officers residing among them.

Blackstone says: The fourth species of offense more immediately against the King and Government are entitled "misprisions and contempts." Misprisions are, in the acceptance of our law, generally understood to be all such high offenses as are under the degree of capital, but nearly bordering thereon. * * * Misprisions which are merely positive are generally denominated contempts or high misdemeanors, of which the first and principal is maladministration of such high offices as are in public trust and employment. This is usually punished by the method of parliamentary impeachment. (Vol. 4, p. 121. See Prescott's Trial, Mass., 1821, pp. 79-80, 109, 117-120, 172-180, 191.)

On Chase's trial the defense conceded that to misbehave or to misdean is precisely the same. (2 Chase's Trial, 145.)

The Constitution declares that judges, both of the Supreme and inferior courts, shall hold their commissions during good behavior. This tenure of office was introduced into the English law to enable a removal to be made for misbehavior. (Chase's Trial, 357.)

At common law, an ordinary violation of a public statute, even by one not an officer, though the statute in terms provides no punishment, is an indictable misdemeanor. (Bishop, Constitutional Law, 3d ed., 187, 535.)

The term "misdemeanor" covers every act of misbehavior in a popular sense. Misdemeanor in office and misbehavior in office mean the same thing. (7 Dane Abgt., 365.) Misbehavior, therefore, which is a mere negative of good behavior, is an express limitation of the office of a judge.

We may therefore conclude that the House has the right to impeach and the Senate the power to try a judicial officer for any misbehavior or misconduct which evidences his unfitness for the bench, without reference to its indictable quality. All history, all precedent, and all text writers agree upon this proposition. The direful consequences attendant upon any other theory are manifest.

For the first time in impeachment trials in this or any other country the claim is made that a judge can be impeached only for acts done in his official capacity.

If that position is well taken, a judge might be a common drunkard, an open frequenter of disreputable resorts; he might be a common thief, an embezzler of trust funds, a gambler, even a murderer. If he could manage to keep out of jail and attend to his judicial duties, the remedy by impeachment would not reach him. To state the proposition is to argue it.

Removal of a judge for misbehavior or lack of good behavior is impossible unless it can be done through the impeaching power. Other-

wise the people are powerless to rid themselves of the most unworthy, disgraceful, and unfit official.

But the exigencies of this case do not demand even a discussion of the proposition that a judge can be impeached only for acts done in his official capacity.

The claim is in the nature of a demurrer to the first seven articles. It admits the truth of the averments contained in them. It admits that the respondent, as judge of the district court he held at Waco, Tex., that as judge he knowingly made a false certificate; that as judge he receipted for and received money to which he was not entitled as reimbursement for expenses incurred as judge which he never did incur. All these acts were done in his official capacity. If he had not been a judge he could not have held the court, incurred any expense, or receipted for or received any money. The stamp of his official character is on every act. His official position enabled him to do what he did do; without it he could not have violated the law.

In the case of the use of the property of the bankrupt corporation, which was in his hands for preservation, it was because he was judge that he had the opportunity to use the property. It was to bring him to hold court that the car was sent. An officer of his court sent it. He had the right and it was his duty to approve the account covering the expenses of the trip. If he had not been a judge he could not have used the property of the railroad company. The article charges that Charles Swayne, judge, appropriated the property to his own use without making compensation under a claim of right, viz., that what he did was done in his official capacity.

The articles that charge him with violating the residence law assert that he did it while exercising his office of judge. The act is directed against judges; a private person can not violate it. The act commands a judge to reside in his district—that is, the official must live there; it is to be his official residence, so that he will be where he is wanted to perform his official duty. The violation of the law is the violation of an official duty which the law imposes on him in his official character. All this the demurrer confesses, and yet the argument is made that for a violation of the act a judge is not impeachable, because it is not an official act.

But the proposition is seriously advanced that no act of Congress can create an impeachable offense or make a crime or misdemeanor the subject of impeachment for which impeachment would not lie in England before the adoption of the Constitution.

Impeachable offenses were not defined in the English law by act of Parliament or otherwise; any offense was impeachable that Parliament chose to so consider. Therefore, when Congress makes that a crime or misdemeanor which was not so denominated at the time of the adoption of the Constitution it does not follow that the acts made crimes were not the subject of impeachment before the adoption of the Constitution.

For example, suppose no English law condemned the making of false certificates by a judge for the purpose of obtaining money from the Treasury. Can it be said that if an English judge had been guilty of such an offense that he would not have been subject to impeachment? If so, then neither can it be said that Congress created new impeachable offenses when the act was passed pertaining to false certificates.

The power to impeach for misbehavior of civil officials is vested in the House and the power to try in the Senate as fully as it was exercised by the English Parliament before 1787. That power covered every offense from high treason to slander against a ruler. Subject only to the limitation that the remedy by impeachment is confined to civil officers—for high crimes and misdemeanors—the power was conferred and may be exercised as fully now as then.

We have seen that, according to the law of Parliament, misdemeanor and misbehavior of public officers are synonymous terms. Another proposition advanced by counsel for respondent is that no judge was ever impeached in England for a misbehavior not committed in the discharge of his judicial functions. This is believed to be an error; judges were impeached for giving extrajudicial opinions. But suppose the fact to be as stated, the conclusion would not follow that because no English judge ever misbehaved himself outside of his official duties as to make him a subject of impeachment that therefore he could not have been impeached if he had so misbehaved.

But however interesting discussion of such question may be, it is quite unimportant in this case. All the charges against this respondent grow out of his official acts. Nothing that he did of which complaint is made could have been done by a private person, or by anyone who did not hold a judicial office. Because the respondent was a judge he had the right to make a certificate upon which to draw money from the Treasury; because he was a judge a private car was sent to bring him from Guyencourt to hold court at Jacksonville; because he was a judge the law imposed upon him the duty of living in a certain district; because he violated the law in all these cases in his official capacity he is charged.

The conclusion is therefore not to be resisted that, even if the contention of the respondent's counsel is correct, a judge can be impeached for nothing but official misconduct, these offenses are within the rule, and of them this court has jurisdiction.

Mr. THURSTON. Mr. President, counsel for the respondent are keenly alive to the situation in the Senate, upon which the country depends for legislation that is essential to carry on the Government until another Congress can sit; and, profoundly solicitous for the welfare of our client, desiring to do what is right by him and also by the country, we now offer in his behalf to submit this case to the vote of the Senate without argument, if that is agreeable to the managers on the part of the House.

Mr. Manager PALMER. Mr. President, that suggestion is not agreeable to the managers. In at least one case—the O'Neal case—testimony was put in without any comments and without being read, on the suggestion that it should be explained when it came to the argument. This case can not be understood, it can not be properly disposed of, without explanation. While we share with the respondent's counsel in his solicitude for the welfare of the people of the United States, we are of the opinion that there is no public business before the Senate now that is of any more consequence than this. Therefore we decline to submit this case without argument.

The PRESIDING OFFICER. Proceed with the argument.

Mr. Manager OLMSTED. Mr. President and Senators: "Justice is the great interest of man on earth." Such is the motto inscribed upon the corporate seal of the bar association of the great Commonwealth

from which I come, and should be the actuating, moving, guiding sentiment inscribed upon the heart and conscience of every official charged with the administration of justice.

From the day when the first judge in Israel received from the Ruler of the Universe the command, "Thou shalt not respect the person of the poor nor honor the person of the mighty, but in righteousness shalt thou judge thy neighbor," down to the present moment of time there has not been, nor can there ever be, within the power of man to confer upon man any office holding more of human interest than the office of judge. It represents the wisdom, the beneficence, the protection, the dignity, the awful majesty, and the vast power of the law. It touches, or may touch, us in almost every relation of life—in our rights, our properties, our reputations, and, as the evidence in this case shows, our liberties, or even our lives.

So vast and varied are the responsibilities, so delicate and important the duties, of this high office, and so great the necessity of removing the judge—who, after all, is but a human being—from the local, political, partisan, and other influences which so often sway human conduct, and imperceptibly, perhaps, influence human judgment, that the Constitution does not permit Federal judges to be elected by the people; nor appointed for a definite term of years; nor removed by the power which appoints them, nor by any other power or tribunal on earth save only the Senate of the United States by a two-thirds vote.

And even the Senate can not act, except upon articles of impeachment presented by the House of Representatives, which can only impeach, but may not itself try or convict. Thus guarded and protected from outside influence and interference, the Federal judge need neither trim his sails to the changing winds of popular approval nor change his course with the shifting currents of the times. He is left, as nearly as possible, free and untrammelled in the performance of the functions of his office so long as he complies with the terms of his appointment—performs his part of the solemn contract between himself and the people of the United States.

Now, what are those terms and what is that contract?

The judges, both of the Supreme Court and of inferior courts, shall hold their offices during good behavior.

So reads the Constitution. (Art. III, sec. 1.)

Know ye, * * * I have nominated and by the advice and consent of the Senate do appoint for United States district judge for the northern district of Florida * * * to have and to hold the said office, with all the powers, privileges, and emoluments to the same with right pertaining to him, the said Charles Swayne, during good behavior.

Thus reads the commission granted by the President of the United States to the respondent. That is his term of office fixed by the Constitution and specified in his commission. That is the condition upon which he holds. In what way and by what tribunal may that term be declared at an end for violation of that condition? The Constitution has not left that question to be determined by any other judge or judges, who might be influenced, either by the fellowship of kindred office or the envies and jealousies that sometimes obtain among those in like position, nor by a jury which might be influenced by local prejudice or popular excitement.

Here in this Senate, composed of two members chosen from each State in the Union—chosen from among their fellows by the legisla-

tures of those States because of their eminent qualifications and fitness to represent their respective Commonwealths—here, and here only, is the power of removal vested. Here, and here alone, may the people be relieved of a judge whose behavior is not good. There is no method of enforcing the constitutional provision that judges shall hold office only “during good behavior” except in the manner pointed out, also in the Constitution, “that the House of Representatives * * * shall have the sole power of impeachment” (Art. I, sec. 2), and that “the Senate shall have the sole power to try all impeachments” (Art. I, sec. 3).

That these powers of impeachment and trial were intended for just such cases as this is made clear from the further declaration that “judgment in cases of impeachment shall not extend further than the removal from office and disqualification to hold and enjoy any office of honor, trust, and profit under the United States.” (Art. I, sec. 3.) For offenses against the laws of the land the party impeached and convicted is by the express terms of the Constitution left “liable and subject to indictment, trial, judgment, and punishment, according to law.”

All that this tribunal can do is to remove him from and disqualify him to hold office. As I shall presently show, the Senate is not bound to extend its judgment to disqualification, but in another provision we find the distinct command that “the President, Vice-President, and all civil officers of the United States shall be removed from office on impeachment for and conviction of treason, bribery, or other high crimes and misdemeanors.” (Art. II, sec. 4.)

Although it is plain from the preceding article that the Senate may extend its judgment to permanent disqualification to hold any office, this express command applies only to removal. Under a substantially similar provision the senate of my own State, in 1803, having convicted Judge Addison, removed him from office, but limited his disqualification to the holding of “the office of judge of any court of law in the Commonwealth of Pennsylvania.” One year later, this Senate having convicted John Pickering, Federal judge in a New Hampshire district, upon a charge of drunkenness, and also upon an article charging another offense, he was removed, but the judgment did not include disqualification.

WHAT ARE IMPEACHABLE OFFENSES?

Although it would seem that the question must now be considered settled, nevertheless in nearly every impeachment trial the question is raised as to the character of and offenses for which impeachment will lie. In times past men of great learning and authority have contended that no officer can be impeached except for indictable offenses, and that as there are no common-law offenses against the United States it follows that there can be no impeachment except for an offense expressly declared and made indictable by act of Congress. This view of the matter fades away in the bright light of reason and of precedent.

Such a construction would render the constitutional provision practically a nullity. Congress has defined and made indictable by statute comparatively few offenses. It would be impossible in any statute to define or describe all the various ways in which a judge or other civil

officer might so notably and conspicuously misbehave himself as to justify and require his removal. Even murder is not defined in any act of Congress. When it so appears, reference to some other source must be had to ascertain the meaning of the term. Murder is not made indictable by any act of Congress, nor has any Federal court jurisdiction of that crime unless committed upon the high seas.

Suppose a judge to commit murder upon the dry land within the confines of a State. That would not be a high crime or misdemeanor within the provision of any act of Congress. Could it successfully be maintained that it was not a high crime and misdemeanor within the meaning of Article II, section 4, of the Constitution, or that it was not such a breach of good behavior as would justify removal from office? If that be the proper construction, then it is possible to imagine that as the respondent transacted official business at and dated his communications from "United States district court, northern district of Florida, judge's chambers, Guyencourt, Del.," so a more violent and vicious man might conduct business at "Judge's chambers, State penitentiary," and still be free from all danger of impeachment or removal from the judicial office.

I have shown, Mr. President, that men have formerly argued that only indictable offenses are subjects for impeachment; that as there was no common-law offenses against the United States there can be no impeachment except for crimes declared and defined by act of Congress. But now, in the 48-page brief served upon us last evening bearing the names of the honorable counsel for respondent, but the authorship of which they distinctly disavowed—and I now know the reason why—we find the astounding doctrine that no man can be impeached for any offense declared by Congress. Therefore no officer can be impeached, no matter what he does, unless we can find that in England some judge had been impeached for the same specific offense prior to the adoption of our Constitution, which borrowed something from the mother country in this matter.

Now, we admit, Mr. President, that the term "impeachment" is imported from the English law, and so is the constitutional phrase "high crimes and misdemeanors" used in relation thereto. They are both without definition, either in the Constitution or in any act of Congress. Where, then, shall their definition and construction be found? Our Supreme Court has declared that—

Where English statutes—such, for instance, as the statute of frauds and the statute of limitations—have been adopted into our legislation, the known and settled construction of those statutes by courts of law has been considered as silently incorporated into the acts or has been received with all the weight of authority. (*Pennock v. Dialogue*, 2 Peters, 2-18.)

That was a unanimous decision, in which Chief Justice John Marshall participated and concurred, and the opinion was written by Mr. Justice Story.

To the same effect is the case of *United States v. Jones* (3 Wash. C. C. R., 209), and many other authorities that might be cited.

We may therefore look to the law of England for the meaning of the term "impeachment" and of the phrase "high crimes and misdemeanors," as used in connection therewith—not so much to the statute law, nor to the common law, as generally understood, but to the common parliamentary law of England, as found in the precedents and reports of impeachment cases.

The Senate has always been governed in impeachment cases by the *lex et consuetudo parliamenti*. It requires but a brief investigation to show that according to the English parliamentary practice in vogue at and prior to the adoption of the Constitution, the greatest possible variety of offenses, not indictable, were nevertheless held proper causes for impeachment.

In II Wooddeson's *Law Lectures*, an acknowledged authority, the learned author, in his lecture upon "Parliamentary Impeachments," says (p. 596):

It is certain that magistrates and officers intrusted with the administration of public affairs may abuse their delegated powers to the extensive detriment of the community and at the same time in a manner not properly cognizable before the ordinary tribunals. The influence of such delinquents and the nature of such offenses may not unsuitably engage the authority of the highest court and the wisdom of the sagest assembly. The Commons, therefore, as the grand inquest of the nation, become suitors for penal justice, and they can not consistently, either with their own dignity or with safety to the accused, sue elsewhere but to those who share with them in the legislature.

On this policy is founded the origin of impeachments, which began soon after the constitution assumed its present form.

And again (p. 601):

Such kind of misdeeds, however, as peculiarly injure the commonwealth by the abuse of high offices of trust, are most proper, and have been the most usual grounds for this kind of prosecution. Thus, if a lord chancellor be guilty of bribery, or of acting grossly contrary to the duty of his office; if the judges mislead their sovereign by unconstitutional opinions; if any other magistrate attempt to subvert the fundamental laws or introduce arbitrary power, these have been deemed cases adapted to parliamentary inquiry and decision.

So where a lord chancellor has been thought to have put the seal to an ignominious treaty, a lord admiral to neglect the safeguard of the sea, an ambassador to betray his trust, a privy counselor to propound or support pernicious and dishonorable measures, or a confidential adviser of the sovereign to obtain exorbitant grants or incompatible employments, these imputations have properly occasioned impeachments, because it is apparent how little the ordinary tribunals are calculated to take cognizance of such offenses or to investigate and reform the general polity of the state.

In several cases English judges were impeached for giving extrajudicial opinions and misinterpreting the law. (4 Hatsell, 76.)

Such is the undoubted Parliamentary law of England, from which our process and practice of impeachment and the very term itself are derived. That it has been adopted and followed here is equally certain.

Judge Curtis, in his *History of the Constitution* (pp. 260-261), says:

The purposes of an impeachment lie wholly beyond the penalties of the statute or the customary law. The object of the proceeding is to ascertain whether cause exists for removing a public officer from office. * * * Such a cause may be found in the fact that either in the discharge of his office or aside from its functions he has violated a law or committed what is technically denominated a crime, but a cause for removal from office may exist where no offense against positive law is committed, as where the individual has, from immorality, imbecility, or maladministration, become unfit to exercise the office.

And Judge Story says, in section 799 of his work on the Constitution:

Congress has unhesitatingly adopted the conclusion that no previous statute is necessary to authorize an impeachment for any official misconduct. * * * In the few cases of impeachment which have hitherto been tried no one of the charges has rested upon any statutable misdemeanor. (1 Story on Con., sec. 799.)

Such writers as Cooley and Wharton and Rawle maintain the same position and support it not only by reason, but by authority and

precedent. For a very able discussion of this subject I refer to the brief of Mr. Lawrence, adopted by the managers and published among the proceedings in the impeachment of Andrew Johnson and also in 6 American Law Register, new series, page 641.

Every impeachment case ever presented to the United States Senate has been founded upon articles, some or all of which charged offenses not indictable; and Judge West, of Tennessee, as well as Judge Pickering, was convicted and removed for offenses not subject to indictment under either State or Federal laws.

We agree with the respondent's brief, the authorship of which his counsel disavow, that the general character of offenses impeachable may be studied to advantage by a consideration of the English precedent, but I can never agree that in order to convict an American judge we must first show that some English judge has been convicted of the same specific offense.

No English judge has been impeached for murder, or perjury, or forgery, or larceny; and yet they were undoubtedly impeachable offenses in England as they are here to-day. They, or any of them, would certainly constitute a breach of that "good behavior" during which Federal judges hold their commissions. Surely an offense which would have been impeachable without a statute is none the less so because Congress has declared it a misdemeanor. Taking money out of the Treasury on a false certificate would have been impeachable in England before our Constitution. It is none the less so here, statute or no statute.

JURISDICTION OF FIRST SEVEN ARTICLES.

Respondent denies that the offenses charged in the first seven articles are proper subjects of impeachment on the ground, as we understand it, that they were committed by him in his private and not in his official capacity; or, in other words, that the articles do not charge misbehaviors or misdemeanors in office. We labor under the impression that the respondent is "in office," and that any misdemeanor committed by him, either in his private or official capacity, since he accepted the President's commission was a misdemeanor "in office." He may have been out of his court room and out of his district, but he has never been out of office.

The Constitution and his commission each defines his term as "during good behavior," and provides for his removal from office for "treason, bribery, and other high crimes and misdemeanors," meaning thereby misbehavior, for misbehavior is misdemeanor, and misdemeanor is misbehavior. There is no limitation to offenses actually committed upon the bench, nor to those committed while in the performance of any judicial or official function, or in any way under color of office.

The Century Dictionary gives this definition:

During good behavior: As long as one remains blameless in the discharge of one's duties or the conduct of one's life; as, an office held during good behavior.

Judge Curtis, in his History of the Constitution (p. 260-261), says:

The purposes of an impeachment lie wholly beyond the penalties of the statute or the customary law. The object of the proceeding is to ascertain whether cause exists for removing a public officer from office. * * * Such a cause may be found in the fact that either in the discharge of his office or aside from its functions he has

violated a law or committed what is technically denominated a crime, but a cause for removal from office may exist where no offense against positive law is committed, as where the individual has from immorality, imbecility, or maladministration become unfit to exercise the office.

Such is manifestly the intention of the Constitution. That instrument says "during good behavior." It does not, as some of the State constitutions do, add the words "in office." It says "high crimes and misdemeanors," but it does not add "in office." In the brief of respondent's honorable counsel, the authorship of which they disavow, they tell us, and it is entirely true, that at one stage of its formation the provision read, "misdemeanors against the State." But as the words "against the State" were stricken out they argue that it must be construed as if they had been left in.

JUDGE HUMPHREY'S CASE.

Mr. President, there are plenty of authorities, both English and American, that in order to be the subject of impeachment it is not necessary that an offense shall be committed even under color of office, and just here I take issue in the most emphatic manner with the statements of that 48-page brief as to the causes for which convictions have been had in impeachment. It is full of historical inaccuracies. It declares, for instance, that Judge West H. Humphreys, of Tennessee, was convicted only for offenses committed in his judicial capacity.

I say that he was convicted upon each one of the seven articles, only one of which—the fifth—had any relation at all to his duties as a Federal judge. The very first article charged him with advocating secession. Where? Upon the bench? No. In the court room? No. In a written opinion? No; but in a public speech in the city of Nashville. Five other of those counts were of the same character. How could a judge commit that offense upon the bench? He did not speak as a judge, but as a citizen at a public meeting.

Mr. President, Andrew Johnson came within one vote of being impeached upon the eleventh article in his case, a portion of which I will read:

That said Andrew Johnson, President of the United States, unmindful of the high duties of his office, and of his oath of office, and in disregard of the Constitution and laws of the United States, did, heretofore, to wit on the 18th day of August, A. D. 1866, at the city of Washington and the District of Columbia, by public speech, declare and affirm in substance, that the Thirty-ninth Congress of the United States was not a Congress of the United States.

Upon that article the vote against him was 35 to 19. A change of one vote would have expelled him from the Presidency.

Treason, removal for which is made compulsory, is specifically defined by the Constitution in these words:

Treason against the United States shall consist only of levying war against them or adhering to their enemies, giving them aid and comfort.

It would hardly be possible for a judge, sitting upon the bench, or in any other way except entirely aside from any function of his office, to be guilty of this offense. But suppose that, disassociating himself as far as possible from his judicial position, he should in his individual capacity participate in "levying war against them or in adhering to their enemies, giving them aid and comfort."

That would surely be treason, as constitutionally defined, and yet,

upon the argument of the honorable counsel for respondent, he could not be impeached and removed from office for that offense. Think of that. A traitor to his country, sitting securely upon the bench, secure from removal by any power on earth, for in no way can he be removed except by the Senate, upon impeachment by the House of Representatives. A Federal judge, upon that reasoning, might commit murder upon the public highway, or be convicted of housebreaking, or forgery, or perjury, or in any other way bring into contempt his high office, and yet we are told that if the offense be not committed upon the bench, nor in the court room, nor in any way relating to his judicial duties, he can not be impeached and removed.

It is hardly necessary to prolong this branch of the discussion, in view of the fact that the question has already been determined by the Senate itself.

BLOUNT'S CASE.

In 1797 William Blount was expelled from the Senate for attempting to seduce a United States Indian interpreter from his duty and to alienate the affections and conduct of the Indians from the public officers residing among them. That was not a statutory offense, nor committed in the Senate Chamber, nor in the exercise or omission of any Senatorial function, nor under color of office; but the Senate, nevertheless, resolved that he "having been guilty of a high misdemeanor entirely inconsistent with his public trust and duty as a Senator be, and he is hereby, expelled from the United States Senate."

That was not upon an impeachment proceeding, but the principle involved was precisely the same; and later it was sustained in the impeachment case of Judge Humphreys, as I have shown.

THE ARTICLES DO CHARGE OFFENSES HAVING STRICT RELATION TO HIS OFFICIAL OFFICE.

It is difficult in any event to see any force in respondent's plea to the jurisdiction. The offenses charged in the first seven as well as in all the other articles do relate entirely to his judicial office, and not to his private conduct. The first article, for instance, charges that the respondent "did then and there, as said judge, make * * * a false claim against the Government of the United States in the sum of \$230." The certificate referred to is recited at length in the article found on page 7 of the proceedings. It reads that—

I, Charles Swayne, district judge for the northern district of Florida, do hereby certify—

and then sets forth that he was directed to and did hold court at Waco, Tex., in 1897, and "that my reasonable expenses for travel and attendance amounted to the sum of \$230, which sum is justly due me for such travel and attendance." It is signed "Chas. Swayne, judge." The answer to that article, signed by the respondent, you will find commencing on page 26 of the proceedings, wherein he says:

He admits that on the 20th day of April, 1897, at Waco, in the State of Texas, acting as United States judge in and for the northern district of Florida, he made and presented to R. N. Love, the United States marshal in and for the northern district of Texas, the certificate in writing as set forth in the said first article, and did then and there receive from the said R. N. Love, United States marshal as aforesaid, the sum of \$230 in full payment of the account certified to as aforesaid.

Turning then to page 87 of the proceedings, we find another instance in which he declares that—

I, Charles Swayne, district judge of the United States for the northern district of Florida, do hereby certify that I was directed to and held court at the city of Tyler, in the eastern district of Texas, * * * and that my reasonable expenses for travel and attendance amounted to the sum of \$310.

This also is signed "Charles Swayne, judge." Just below it is a receipt for the money signed "Charles Swayne, judge."

And turning back to the thirty-first item of the marshal's account on the preceding page we find the entry: "Chas. Swayne, expenses, judge, special term, Tyler, \$310." And so all through you will find the certificates made by and the money paid to not the individual, but to the judge. He admits in his answer that he made the certificate and received the money "acting as United States judge."

It is a well-known principle of law that anything proceeding from the mouth or the pen of a man may be used against him; and the respondent having made the express admission, as I have shown, that he made the certificates and received the money "acting as United States judge," that would seem to be the end of the matter.

But had he denied instead of admitting he could not have changed the situation. Congress has never made any appropriation for the payment of money to him as a private citizen. A trip to Waco or Tyler in any capacity other than that of judge would not have entitled him to draw a cent from the Treasury in reimbursement of expenses or for any other purpose.

The statute appropriates for payment "of reasonable expenses for travel and attendance of district judges directed to hold court outside of their districts," and provides that it shall be paid by the marshal "on written certificates of the judges." Reimbursement for expenses can be made only to a judge upon the certificate of a judge, and the payment is to reimburse him for holding court as a judge. The whole matter relates to, and is inseparably connected with, the office of the judge.

The respondent can not divide himself into two separate and distinct legal entities so as to be a judge when holding court, certifying to his expenses and drawing money from the Treasury, and then resolve himself into a private citizen eo instanti his good behavior is questioned. Everything he did in this connection was under color of his office and inseparably related thereto.

ARTICLES 4 AND 5.

The fourth article charges that he, "while in the exercise of his office of judge * * * did unlawfully appropriate to his own use" certain property belonging to a railroad company in the possession of a receiver appointed by him "judge, as aforesaid, on the petition of creditors," that "the expenses of the trip were paid by the said receiver * * * and the said Charles Swayne, acting as judge, allowed the credit claimed by the said receiver for and on account of the said expenditure," and that—and to this I call particular attention—"the said Charles Swayne, judge as aforesaid, used the said property without making compensation to the owner, and under a claim of right, for the reason that the same was in the hands of a receiver appointed by him."

The fifth article is of like import. The receiver was an officer of the court, appointed by the respondent and responsible to him as judge. In the capacity of judge it became his duty to pass upon the receiver's accounts. The charge is that he made use of the property under a claim of right, on the ground that the same was in the custody of the court, acting through the agency of the receiver who was his appointee. All this relates strictly to his behavior in office as judge. These charges can not be disassociated from his official position, and this Senate certainly has jurisdiction to determine whether or not they have been proved.

ARTICLES 6 AND 7.

The sixth and seventh articles relate only to the matter of residence under an act of Congress which specifically requires that—

Every judge shall reside in the district for which he is appointed, and for offending against this provision shall be deemed guilty of a high misdemeanor.

This is directed not to private citizens, but to all who are judges. It is difficult to see how the judge of the northern district of Florida could reside in his district unless the respondent were individually there also; nor how the respondent could in his individual capacity reside at Guyencourt, Del., without taking the judge with him. If the Senate shall find that these articles have been sustained and that the judge, whose duty it is to faithfully administer and enforce the laws, has himself openly, notoriously, continuously, and persistently violated an act of Congress, passed for the express purpose of regulating, in the matter of residence, his conduct as a judge, it is absurd to contend that such violation of law was not the opposite of good behavior, or that it was not what Congress has solemnly declared it to be, a high misdemeanor. I therefore conclude this branch of the argument, submitting with entire confidence the two propositions:

First, that any civil officer of the United States may be impeached and removed for high crimes and misdemeanors either in the performance or entirely aside from the functions of his office; and, second, that the first seven, as well as the remaining articles, charge respondent with notable misbehavior, gross violations of law, and abuses of power—high crimes and misdemeanors in matters relating strictly to his judicial office, and in which it would have been beyond his power to offend had he not been a judge.

LAW GOVERNING EXPENSES OF JUDGES.

The first three articles charge that in at least that many instances the respondent obtained money from the Treasury upon false statements of his expenses. The act of 1896, found in 29 Statutes at Large, at page 451, provides for the payment—

Of reasonable expenses for travel and attendance of district judges directed to hold court outside of their districts, not to exceed \$10 per day each, to be paid on written certificates of the judges, and such payment shall be allowed the marshal in the settlement of his accounts with the United States, * * * and a compensation for jury commissioners, \$5 per day, not exceeding three days for any one term of court.

Upon the respondent's theory a jury commissioner attending court only one day would be entitled to \$15.

The offense charged in the first article occurred very shortly after the passage of this act. The respondent says in his answer that it

became his duty to construe the act, and that he reached the conclusion and judgment that it entitled him to be paid "at the rate of \$10 per day as a liquidated sum." He does not claim that he consulted or knew the construction or opinion or practice of any other judge or any other court. He declares that he himself placed that construction upon the act.

His actions show, as I shall presently demonstrate, that as a matter of fact he did reach a very different conclusion and proceeded upon a very different theory. But for the present let us consider him as sitting in the privacy of his own room for the construction of this statute. He had before him the case of *Swayne v. The United States Treasury*. He himself was plaintiff, counsel for plaintiff, and judge. The Treasury was not represented. Now, the language of that statute—"reasonable expenses for travel and attendance * * * not to exceed \$10 per day"—is plain, simple, and entirely free from ambiguity. A learned judge, desiring to act impartially, would at once recall the great principle declared by Chief Justice Marshall, speaking for the Supreme Court in the case of *United States v. Fisher*, found in 2 Cranch, at page 358, that "where the intention is plain nothing is left to construction."

If he wanted earlier authority he would have found it in the language of Lord Tenterden, in the case of *The King v. Inhabitants of Great Bentley* (10 Barn. & Cres., 520), that—

We think it much the safer course to adhere to the words of the statute construed in their ordinary import than to enter into inquiry as to the supposed intention of the persons who framed it.

If he wanted later rulings he would have found them cited by the hundred by Sedgwick, Endlich, Sutherland, and every other writer on statutory construction.

If the learned respondent was not, as every judge ought to be, familiar with that principle and with those authorities, he might at least have recalled the equally applicable principle laid down by Sutherland, and supported by abundant citation of authorities that—

Acts relating to the fees and compensation of public officers are strictly construed, and such officers are only entitled to what is clearly given by law.

Had there been any room for construction at all in so plain a provision of law he ought to have considered the very well-known and invariable rule of construction that every word and phrase in a statute must be given effect if possible. In reaching the construction that it authorized him to receive \$10 per day as a liquidated sum when in fact he had only expended \$3, what effect did he give to the phrase "not to exceed?" He must have eliminated that entirely.

As he says in his answer that he was at the time familiar with the act of 1881, which is printed in the *Compiled Statutes* immediately in connection with section 587 of the *Revised Statutes*, relating to the expenses of judges sitting in the southern district of New York, and the terms of which are practically those of the act of 1896, which he says he was construing, he must have been familiar with that provision also. Had he cared to know the ruling of the Treasury Department upon the subject he could readily have found it, as I have done, in the second volume of the *Comptroller's Decisions*, at page 286, from which I read as follows:

The act of March 5, 1872 (17 Stat., 36), provided that whenever "a district judge from another district shall hold a district or circuit court in the southern district of

New York, his expenses, not exceeding \$10 per day, certified by him, shall be paid by the marshal of said district, as a part of the expenses of the court, and be allowed in his accounts."

By this act a district judge holding court in the southern district of New York was put upon a different footing from district judges holding court elsewhere, and payment was authorized to such judges, not of a per diem of \$10, but of their expenses not exceeding \$10 per day, and which expenses should be evidenced by the certificate of the judge.

He would have found from a careful reading of that published decision that the Department placed precisely the same construction upon a similar provision in the act of 1891 providing for the expenses of judges sitting in the circuit court of appeals, holding that it did not fix a liquidated sum, but merely provided for the "reimbursement" of judges for their reasonable expenses, naming \$10 as the maximum. Then, too, had he cared to know, he might have found in the still later opinion by Comptroller Tracewell, in volume 4 of the published reports, at page 432, the ruling thus stated in the syllabus:

A special agent of rural free delivery, authorized by his appointment to be paid "at the rate of \$5 per day and his expenses, limited to \$4 per day," is not entitled to a per diem of \$4 per day in lieu of expenses, but only to reimbursement for expenses actually and necessarily incurred in the performance of his duty, not to exceed \$4 per day.

The present Comptroller, Mr. Tracewell, in disallowing a claim for thirty-one days, at \$4 per day, amounting to \$124, used, as reported on page 436, the language which I will ask the Secretary to read.

The PRESIDING OFFICER. The Secretary will read as requested.

The Secretary read as follows:

But I do not understand from the language of his appointment; as set out in the letter of the Postmaster-General designating him to this agency that the \$4 per day therein mentioned was used in the same sense of compensation in the way of pay or salary or in lieu of expenses as an additional salary, but was used in its ordinary sense of reimbursing Mr. Bach up to the amount of \$4 per day for money paid out by him on account of his personal expenses while engaged in the service of the Government.

Mr. Manager OLMSTED. The case bearing most nearly upon the subject is *Penwell v. Board of County Commissioners*, reported in 59 Pacific Reporter, at page 167. The statute before the court in that case provided that—

The maximum annual compensation allowed to any deputy or any assistant is as follows: * * * under sheriff, not to exceed \$1,800; each deputy sheriff, not to exceed \$1,200; * * * chief deputy county attorney, \$1,800.

There was some room for construction there, as the words "not to exceed" did not immediately precede the words "chief deputy county attorney." He denied the right of the commissioners to fix his compensation at any less amount than \$1,800, but the court unanimously determined that the limitation was intended to apply to all the officers named in the statute, and said:

In our opinion, therefore, there was no evident intention on the part of the legislature, by the omission therein referred to, to fix the compensation of the deputy county attorney at a certain sum, or to take away the right to put it at a sum less than the maximum named.

The court held that the maximum named in the statute, following the words "not to exceed," was not to be treated as a liquidated sum. Had the respondent found it necessary to refer to the history of the

times for the construction of the perfectly unambiguous act of 1896, which admitted of no construction, he would have found in the consideration of the acts of 1881 and 1891 and the decision of the Comptroller of the Treasury, already referred to, the reason for the act of 1896 and the limitation therein contained. Prior to that time district judges were permitted to be reimbursed for their actual expenses, whether reasonable or unreasonable.

They were frequently made to run above \$10 per day, and in one case, we are told, exceeded \$40, but they were required to be itemized and supported by vouchers. On the other hand, circuit court judges and district judges when sitting in the circuit court of appeals were limited to reimbursement for their actual expenses to an amount not exceeding \$10 per day. They were not required, however, to itemize their expenses nor support their bills by vouchers; but the marshal was required to reimburse each judge upon his own certificate of expenses without itemization or supporting vouchers. Thus, a district judge holding a district court outside of his own district was governed by one provision and by another and different one if sitting in the circuit court of appeals.

It was to provide uniformity among the judges and at the same time to protect the Government against unreasonable expenses that the act of 1896 was passed fixing \$10 as a maximum and permitting the judge to be reimbursed upon his own certificate of expenses, provided they did not exceed the maximum named in the law. There can not by any process of reasoning or known rule of construction be evolved from the language of the act of 1896 an intention to enable a judge whose expenses were less than \$10 to collect the excess and put it in his own pocket. No such intention lurks in that act nor in any other act that Congress ever passed upon this subject. The manifest intention was to limit, not to increase, the amount to be paid by the Government.

Take the provision with regard to jury commissioners, found in the same statute and in the same paragraph, that they be paid "\$5 a day, not exceeding three days for any one term of court." Would anybody hold that a jury commissioner in attendance but one day would be entitled to the liquidated sum of \$15? Surely not. How, then, are you going to give effect to the phrase "not exceeding" in one part of the paragraph and ignore the words "not to exceed" found in the same paragraph? No intelligent judge nor head of a Department ever has or ever will put his name to an opinion holding that the act of 1896, or any other act upon the subject, authorizes a judge to receive \$10 per day as a liquidated sum for reasonable expenses which were actually very much less.

CONGRESSIONAL DEBATES.

Respondent in his answer refers to the construction of the act appearing "from the proceedings and debates in Congress," apparently forgetful of the decision of the Supreme Court in the case of *United States v. Freight Association* (166 U. S., 290), where, as stated in paragraph 5 of the syllabus, it was held that:

Debates in Congress are not appropriate sources of information from which to discover the meaning of the language of a statute passed by that body.

Mr. Justice Peckham, who delivered the opinion of the court, said (p. 318):

All that can be determined from the debates and reports is that various members had various views, and we are left to determine the meaning of this act, as we determine the meaning of other acts, from the language used therein.

There is, too, a general acquiescence in the doctrine that debates in Congress are not appropriate sources of information from which to discover the meaning of the language of a statute passed by that body. (*United States v. Union Pacific R. Co.*, 91 U. S., 72; *Aldridge v. Williams*, 3 How., 9, Taney, Chief Justice; *Mitchell v. Great Works Milling and Manufacturing Co.*, 2 Story, 648; *Queen v. Hertford College*, 3 Q. B. D., 693.)

The reason is that it is impossible to determine with certainty what construction was put upon an act by the members of a legislative body that passed it by resorting to the speeches of individual members thereof. Those who did not speak may not have agreed with those who did, and those who spoke might differ from each other, the result being that the only proper way to construe a legislative act is from the language used in the act, and, upon occasion, by a resort to the history of the times when it passed.

The language and decision of Chief Justice Taney, thus cited and approved, was that—

In expounding this law the judgment of the court can not, in any degree, be influenced by the construction placed upon it by individual members of Congress in the debate which took place upon its passage, nor by the reasons or motives assigned by them for supporting or opposing amendments that were offered. The law as it passed is the will of the majority of both Houses, and the only mode in which that will is spoken is in the act itself; and we must gather their intention from the language there used, comparing it, when any ambiguity exists, with the laws upon the same subject and looking, if necessary, to the public history of the times in which it was passed.

If, however, the learned respondent, disregarding these high authorities, did refer to the Congressional debates, he found that in the passage of the act of 1896 through the House there was not a single word said concerning that paragraph. He would find in the Congressional Record of April 24, 1896, that there were in the Senate some gentlemen who did not agree with his construction. He would find, for instance, the following:

Mr. ALLEN. * * * This bill provides "that no such person shall be employed during vacation; of reasonable expenses for travel and attendance of district judges directed to hold court outside of their districts, not to exceed \$10 per day each, to be paid on written certificates of the judges."

There is a maximum fixed. There may be days when \$10 would be required to cover the expenses of the judge, and it would be perfectly proper for him to draw that sum and certify to it; but I submit that it is improper and in violation of the spirit, if not of the language, of the statute that the judge, simply because he has the power to certify, will be enabled to take from the Treasury of the United States \$10 for every day to cover his expenses when his actual expenses do not exceed four or five dollars a day.

It may be a small item; probably it is a small item; but it is not small in so far as it develops a disposition upon the part of high judicial officers of the country to violate the spirit of a law which they themselves are engaged in enforcing against criminals and other violators of the law.

Mr. CHANDLER. Will the Senator from Nebraska allow me to interrupt him?

Mr. ALLEN. Certainly.

Mr. CHANDLER. The provision is that the judge shall be paid his reasonable expenses for travel and attendance, not to exceed \$10 a day. The judge of a United States court has to certify that that is an expense; that that is what he has paid out. Does the Senator mean to say that there is a judge anywhere in the United States holding court in that way who, if his expenses were \$7 or \$8 or \$5 a day, would certify that they were \$10 in order to get the additional money?

Then if he had read a little further upon the same page he would have found this observation from the senior Senator from Iowa:

Mr. ALLISON. The Senator from Nebraska will observe that the only object of this provision is to place the district judges upon an equality with circuit judges as respects their expenses.

Mr. ALLEN. Yes, sir; I observe that they are put upon an equality. What I am contending for, and what I hope the honorable Senator from Iowa will remedy, is that these men shall not be permitted to violate the law themselves.

Mr. ALLISON. Does the Senator believe that any district judge or circuit judge is likely to violate the law by making a false certificate? The Senator must remember that this includes all traveling expenses as well as expenses while at the place of holding court.

Mr. ALLEN. I hope the Senator from Iowa will not put me in the attitude of making the charge that all Federal judges violate the law, for I do not make it.

Mr. ALLISON. I certainly would not put the Senator in any such attitude.

Mr. ALLEN. I say some of them do, according to my information. A judge is a human being. He is no more of a man after he becomes a judge than he was at the time he became a judge. If he had frailties at that time, he carries them to the bench with him.

The proposed statute fixed the maximum in these words:

"Of reasonable expenses for travel and attendance of district judges directed to hold court outside of their districts, not to exceed \$10 per day each, to be paid on written certificates of the judges."

That carries the implication, which is as clear as language can make it, that he shall not receive \$10 a day unless his actual expenses amount to \$10 a day.

Mr. GRAY. His reasonable expenses.

Mr. ALLEN. His reasonable expenses. Reasonable expenses include hotel bill and railroad fare. I do not suppose it includes the purchase of a new suit of clothes or a box of cigars, but the reasonable, ordinary expenses of travel, including hotel bills.

He has put in evidence some disjointed expressions of members who either did not have the statute before them or, speaking in haste sometimes said "ten dollars" without adding every time that that was the maximum—without always stopping to use the rather awkward phrase "not to exceed \$10." This occurred chiefly in 1898, two years after the passage of the act of 1896. We did not think these debates admissible, but the Senate having, by a majority of one, admitted them, we have put in the balance.

If in the attempted construction or rather perversion of a statutory provision, so perfectly plain that no room for construction was possible, he had turned to the Congressional Record of January 27, 1903, he would have found that the act passed in that year, increasing the salaries of United States judges, contained, as it passed the Senate and was reported favorably by the Judiciary Committee of the House, an express provision—

that after the passage of this act no payment shall be made to any of the judges mentioned in this act for expenses.

And he would also find that after the said provision has been read the following occurred:

Mr. OLMSTED. Mr. Speaker, I move to strike out the paragraph just read. * * * No judge would feel like going out of his own district to hold court at his own expense. The law does not give him extra pay for that extra service, but he ought to be reimbursed for his actual and reasonable expenses.

The salaries paid are not large enough to warrant Federal judges in going out of their own districts at their own expense. * * * My amendment, however, does not deal with salaries, but with expenses, and I hope that it may be adopted.

The SPEAKER. The question is on the motion of the gentleman from Pennsylvania. The question was taken; and on a division (demanded by Mr. Smith, of Kentucky) there were—ayes 80, noes 69.

So the motion was agreed to.

There was not another word of discussion, but upon my statement to the House that the existing law provided only for the actual expenses of the judges, the paragraph prohibiting the payment was stricken from the bill by the narrow majority of 11. It is to that amendment that the Federal judges are to-day permitted to be reimbursed for their "reasonable expenses, not to exceed \$10 per day."

Had it been supposed that, by any possible construction, a judge might be permitted to receive \$10 where he had actually expended only \$2 or \$3, my amendment would not have received ten votes in the House, and the judges to-day would be compelled to pay their own expenses. There was no other debate on that occasion, and there never has been any since in either branch of Congress.

If, after resorting to all these aids to determine the meaning of a perfectly plain and simple provision, the learned respondent had still been in doubt, he should have given heed to that great divine commandment, "Thou shalt not wrest judgment," rather than the Shakespearean injunction, "Put money in thy purse."

NOT A CASE WHERE A WRONGFUL DECISION MAY BE EXCUSED.

But it is argued that for a mistake in judgment or in the construction of a law a judge may not be held responsible. Doubtless there is much force in the argument as applied to controversies between other parties coming before him for adjudication. This is a different proposition. It was a case in which the judge was directly interested. Had there been any doubt about the law he ought to have recused himself.

He did not write any opinion, or make any ruling, or enter any judgment from which an appeal could be taken. As a matter of fact, he must have had, both before and after consideration, precisely the same view of the words "reasonable expenses not to exceed \$10 per day" that any other intelligent person would have after a single reading. He knew that it did not give him a liquidated sum and he did not proceed upon that theory. On the other hand, his effort was to so avail himself of the privilege given him by the statute, of certifying to his own expenses, his own certificate to be taken upon honor and the amount paid by the marshal, if not exceeding the limit of \$10 per day. The offense charged in the articles of impeachment is not the misconstruction of the act, but the making of a false certificate as to the amount of his expenses.

Mr. FAIRBANKS. Mr. President, I should like to ask, through the Presiding Officer, how much time the honorable manager will require to conclude his argument this evening?

Mr. Manager OLMSTED. Perhaps thirty-five minutes.

Mr. FAIRBANKS. I ask unanimous consent that the order limiting to-day's session to 10 o'clock this evening be modified, so that the learned manager may conclude his remarks.

The PRESIDING OFFICER. The Senator from Indiana asks unanimous consent that the present session of the Senate sitting in the impeachment trial may continue until half past 10. Is there objection? The Chair hears none.

OBTAINING MONEY UPON FALSE CERTIFICATES.

Mr. Manager OLMSTED. Respondent did not rely nor proceed upon any such construction. Had he done so he would have presented a bill for a certain number of days at \$10 per day and made no certificate whatever as to what his expenses had been. He never presented a bill in that way in his life. He knew that if he did it would be treated just as Comptroller Tracewell treated the rural free-delivery man to whom I have referred. He knew that if he simply certified the number of days and nothing more his bill would not be paid. He knew that if he failed to certify also to the amount of his expenses he would never be paid a cent. He knew also that under the law whatever amount he certified as having been his expenses would be paid, provided they did not exceed the fixed maximum. He knew that if he certified, no voucher would be required. He was upon his honor.

He had, of course, to set forth the number of days so that the marshal and, after him, the Comptroller could determine whether or not the expenses certified by him did exceed the legal maximum. What then did he do? Send in a bill for so many days at \$10 per day? Not at all. Look at page 87 of the report of these proceedings and you will find a specimen of his certificates. You will note that it is really in two branches. He first sets forth that he held court twenty-four days at Tyler, and that including the journey to and from that place the time was thirty-one days. He did not stop there. He knew very well that such a certificate would not comply with the law nor enable him to draw a cent from the Treasury, so he adds to his certificate this: "And that my reasonable expenses for travel and attendance amounted to the sum of \$310."

As the amount thus certified did not exceed the maximum, and the law required the judge's certificate to be taken as verity, no room was left for construction by either the marshal or the Treasury Department, but respondent received his money upon his own certificate. The statute commanded the marshal to pay upon the judge's certificate if within the maximum. The other certificates which are in evidence are in the same form.

Each of the first three articles charges the offense, indictable under section 5438, of making a false claim against the Government and obtaining thereon money not justly due, and can it be truthfully and justly said these offenses are not proved?

In the first article, printed on page 7, he had certified that "my reasonable expenses for travel and attendance were \$230." He was at Waco seventeen days and paid Mrs. Downes for board and lodging at the rate of \$1.50 a day, or, say, \$25.50. If in going to Waco he took a Pullman car the whole way, we will allow him a whole section, the price of which would be \$12 each way, or \$24 for the round trip,

The journey usually takes twenty-eight to thirty hours. Allowing for meals, tips to porters, etc., the liberal allowance of \$20, and we have a total of \$69.50. The usual railroad fare is \$22.65, but he did not pay it; he rode free, at least as far as New Orleans, and presumably all the way. To be liberal and fair and cover any possible extras, give him credit for full fare, say \$45.30 (although he did not pay it), and we have a grand total of \$114.80, which undoubtedly exceeds his actual expenses.

The second article relates to a term of court at Tyler, Tex., in December, 1900. His hotel bill, including board, lodging, laundry, and drugs, was precisely \$58.35. Add again the price of an entire Pullman section both ways, \$24, and again allow \$20 for meals, and to be more than fair include the transportation, which he did not pay, \$18.90 each way, or \$37.80, and we have \$130.15, a sum beyond which his expenses did not extend. He certified that they were \$310, and upon his certificate was paid the money.

The third article covers a still more conspicuous instance. At a term of court at Tyler in 1903 his board and lodging for thirty-five days, at \$1.25 per day, amounted to \$43.75. Allow him again for the Pullman section, \$24, meals en route \$20, and \$37.60 for the railroad fare, which he did not pay, and we reach \$125.35. He certified that his expenses were \$410, and upon that certificate drew the money from the Treasury.

As an additional act of liberality to himself it may be noted that while he might readily have gone from Pensacola to either Waco or Tyler and back again in less than three days, he allowed himself on one occasion seven and on each of the others six days for the trip. We have made allowance for meals for that many days. If he stayed over night anywhere he did not use the Pullman sleeper, for which we have allowed \$24.

We have, of course, been proving a negative, which is always difficult; but we have endeavored to be extremely fair and liberal and allow the utmost that he could have incurred as reasonable expenses on these trips. We have certainly shown enough to put the burden of proof upon him to show, as we verily believe he can not show, that he did expend greater amounts than I have indicated.

In these three cases alone he certified and drew from the Treasury, as expenses, between \$500 and \$600 more than he had expended. He was making similar excursions out of his district every year. We have attempted to prove his expenses in three instances only, but undoubtedly his other trips have had the same result of putting money in his pocket.

DEFENSE THAT "THERE ARE OTHERS" NOT PROVED.

The respondent, in his answer, sets up the improper and cowardly defense that others have been guilty of the same offense. Not that he knew of or was influenced by that fact at the time that he made collections, but that he is now informed and verily believes, and that the records of the Treasury Department will show, that certain other judges have done the same thing.

Even the averments of his answer are not directly to the effect that any other judge falsely certified to the amount of his expenses or claimed from the Government more than he had actually expended, and there is not a particle of evidence to that effect concerning any judge in the United States. In his answer he has with the utmost impropriety, for the manifest purpose of influencing the court in advance of and without introducing testimony, included Exhibits A, B, and C, commencing on page 11 of the printed proceedings.

You have decided that this is a criminal proceeding in a court. Suppose a private citizen, charged in his court with the commission of

a high crime or misdemeanor, should in his own plea attempt to introduce evidence not under the seal of any department, not under oath, not in any event admissible, and which he never afterwards tried to prove—suppose that private citizen had caused that matter to get before the jury in an improper manner, what would this respondent have done to him?

How shall the judge himself, when accused, be justified in such improper conduct in presenting to the Senate, sitting as both judge and jury—to determine the facts as well as the law—matter intended to have the effect of evidence, accompanied by the insinuation, if not the direct charge, that it involves the honorable judges named in the said exhibits in the offense of falsely certifying, as we have proved that he himself did. I say that it is a cowardly dragging in the mire of honorable names, and does not tend to show the fitness of the respondent to hold judicial office.

Respondent's honorable counsel offered in evidence tables covering all the nine circuits, showing the "amounts paid" to all judges in reimbursement of expenses, accompanied by the insinuation of counsel that there was something wrong about them. But the tables did not show and respondent did not even offer to prove that any single judge in the whole United States, other than himself, had certified to more expenses than he had actually incurred; for that and other good and sufficient reasons the tables were, upon our objection, excluded, as having no bearing on this case whatever. But the exhibits improperly attached to respondent's answer are in the record of this case, and it is proper for me to refer to them.

EVIDENCE AS TO OTHER JUDGES FALLS SHORT.

But the exhibits commencing on page 29, even if regarded as evidence, prove nothing. They show simply the number of days involved and the total amount paid each judge, which in several cases is equal to \$10 for each day of holding court; but it contains no information whatever as to the amounts which the judges actually did expend nor as to the amounts they certified as having been expended.

In the cases where the charges amounted to as much as \$10 per day courts were held in large cities, most of them in New Orleans, where, as I know, from recent experience, \$10 a day can reasonably be expended, and in Chicago and San Francisco, in any one of which, as everybody knows, a judge could very reasonably expend more than \$10 per day. If they spent more, they could, under the law, be reimbursed only to the extent of \$10. Consequently the amounts actually paid them would be \$10.

There is not the slightest evidence in this case nor anywhere to be found that any judge who had not expended more than \$2 or \$3 was paid \$10, nor is there any evidence in this case, and it is not the fact, that any judge anywhere in the United States ever rendered a bill simply setting forth the number of days at the rate of \$10 per day. Had he rested at that he never would have been paid anything under the Treasury rulings I have already cited.

This respondent has utterly failed to show, and I do not believe that he can show, that any other judge ever falsely certified the amount of his expenses and collected from the Government an amount in excess

thereof. I know that no Federal judge in Pennsylvania ever did such a thing nor placed any such absurd construction on the law. His tables, if they show anything, show that the judges in the particular cases cited expended more than \$10, but were cut down to the maximum prescribed by law.

Where they went into the smaller towns his own tables, improperly introduced for effect as evidence, showed that where expenses were less they neither certified, charged, nor were paid as much as \$10 per day. Table A shows that the respondent, for holding court for forty-one days at Tyler, Tex., received \$410, while the very next item shows that an honorable judge holding court for three days at Paris, Tex., was paid not \$30, but \$20, which included his railroad fare. In the last item a judge for holding court seven days at Fort Worth, Tex., was paid for his expenses only \$35. Even in the larger cities when court was held for a considerable number of days successively, the amounts paid for expenses were frequently less than \$10.

Thus the third item in Exhibit C (p. 12) shows that for seventeen days' court at Tacoma the judge, instead of receiving \$170, charged and received \$124. In another instance for eleven days in the same city, \$77.75. And even in San Francisco, where the court lasted sixty-two days, the amount paid was not \$620, but only \$434. The inference to be drawn from these very tables is that where amounts paid were equal to \$10 per day the actual expenses were more than that, but payment was limited to the statutory maximum. Not a single instance has been shown where any judge has ever construed the law as this respondent says that he did, or ever collected or received as expenses a greater sum than he actually expended.

But if it is wrong to make a false certificate and recover from the United States Treasury as expenses sums of money in excess of the amount actually expended, what justification is it to show that the respondent now learns that somebody else has done the same thing? Suppose that in his court a clerk had been arraigned for tapping his employer's till, would this respondent have charged the jury that it was an ample defense to show that since the commission of the offense the clerk had learned that others were helping themselves whenever they got a chance?

A MASSACHUSETTS PRECEDENT.

This very defense was set up and overruled nearly one hundred years ago in the impeachment of Judge Prescott in Massachusetts, an exceedingly notable case, always relied upon as a valuable precedent, partly because of the splendid learning and ability of the world-renowned lawyers who participated upon either side. Judge Prescott was a probate judge, entitled in certain cases on the ministerial side of his office to receive fees. It was claimed there, as here, that he had not willfully violated the law and that the amounts charged by him were in harmony with the usage of other judges in other counties throughout the Commonwealth.

For the purpose of rebutting the charge of willful misconduct, as well as upon the point of construction of law, his counsel, Mr. Hoar, submitted in writing an offer, or, rather, two offers, to show that what he had charged was in accordance with the usage in other courts throughout the State. The competence of this evidence was valiantly

and with splendid oratory contended for by Mr. Hoar and by no less a lawyer than Daniel Webster, but their arguments were completely overthrown by Mr. Shaw, one of the managers—that same Mr. Shaw who afterwards became chief justice of the supreme court of Massachusetts and achieved a position in the history of the jurisprudence of this country considered by many to be second only to that of Chief Justice Marshall. After elaborate argument the offer was rejected, and Judge Prescott was convicted and removed from office.

SMALLNESS OF AMOUNT.

It is urged here that the amounts involved in these three charges are small; that the excess certified and collected amounted to but a few hundred dollars. In Judge Prescott's case he was convicted upon one article in support of which the evidence showed that he had collected \$5.58, whereas he had been entitled only to \$3.60, an excess of \$1.98; upon the other article in which the total amount involved was less than \$40. It was not charged nor proved what excess fees he had collected in any other case.

It is not charged and proved here, and nobody knows what amounts this respondent may have falsely certified and collected in other cases. It is not a question of amount. It is a question of violation of the statute and of the condition that he shall hold office only "during good behavior." Was it good behavior or was it a misdemeanor for him, acting as judge, to falsely certify as judge, and receive as judge, for his expenses in holding court as judge, an amount in excess of the said expenses? To that inquiry we confidently submit there can be but one answer and that not favorable to the respondent.

OTHER CHARGES.

Nine other articles of impeachment are involved. Other honorable managers will discuss them more at length. In order that we may not travel over the same ground I shall refer to them but briefly.

The acceptance from the receiver and use under a claim of right of property of a bankrupt railroad company—the receiver appointed by himself, being his own arm or the arm of his own court, for the protection of that property for the benefit of creditors and stockholders—was that, although involving in dollars and cents a comparatively small amount, good behavior or was it not?

NONRESIDENCE.

Was it good behavior or was it a misdemeanor to violate, as the evidence in this case conclusively shows that he notoriously and persistently did, the plain, unmistakable, emphatic command of an act of Congress that he shall, while district judge, reside in the district for which he was appointed, and declaring it to be a misdemeanor for him to do otherwise?

In 1873 proceedings were commenced in the House of Representatives looking to the impeachment of Judge Busted, a Federal judge in Alabama, upon a similar charge. The investigating committee reported that he had in that State only "a carpet, a music box, and a double-barreled gun."

Upon that showing Judge Busteed had the grace to resign, and the proceedings were stopped. This respondent had for many years not even a carpet in his district, but hastening away the very evening of or morning after each ten days' or two weeks' session of court, did not leave behind him, as one of the witnesses has testified, so much as his bag of that material. He has not voted for fourteen years, and never in the district where the law commands him to reside.

ILLEGAL SENTENCES FOR CONTEMPT.

And what shall you say of his unlawful, willful, and malicious violations of an act of Congress and of all the rules of fair and honorable judicial conduct in the commitment to jail of honorable attorneys and prominent business men substantially for no offense whatever, but in gratification of his own revengeful feelings?

He sentenced two attorneys to fine and imprisonment and two years' disbarment for no offense committed, and certainly none proved before him, partly because they had commenced a suit against him in a State court, but more because of his offense at an article published in a newspaper with which they had nothing whatever to do, and so stated. In the face of their denials he sentenced the two attorneys to both fine and imprisonment and to disbarment for two years. The disbarment, after a moment's thought, he determined was beyond his authority in that proceeding and withdrew that part of the sentence, showing that before sentencing them he did not bestow the slightest attention to his lawful authority in the premises.

Upon habeas corpus proceedings to the circuit court of appeals Judge Pardee caused the respondent to take another thought and learn that in no event had he the right to both fine and imprison. Already they had served a part of their time in jail with common criminals. One of them afterwards paid his fine to escape the remainder of jail service, so that he suffered both fine and imprisonment, in direct violation of law. The other, feeling that he had committed no offense, declining to submit voluntarily to any portion of the sentence, refused to pay the fine and manfully in his enfeebled condition endured the terrors of a prison cell, from which he was too ill to be moved when the ten days had expired.

The evidence shows that the respondent did not even look at the act of Congress fixing his power in the matter until after he had been reversed by the circuit court of appeals.

What shall you say of his abusive and improper language and angry, unjudicial manner when he denounced as "crooked" and "ignorant" two honorable practitioners, whose conduct in bringing a suit against him he declared was "a stench in the nostrils of the people?"

What shall you say of his treatment of that grand, heroic character, Gen. Simeon Belden, who during the sad and bloody days of civil strife wore manacles for services to Union soldiers in a seceded State, and who has at all times and in all places had the courage to publicly avow his adherence to the party in whose principles he believed, even though there were times when such avowal involved sacrifice as well as courage?

That old man, with three score and ten years of honorable life and nearly fifty years of professional career behind him, in the whole course of which he had never occasion to apologize to man or woman

for ungentlemanly or unprofessional conduct, was too manly and too brave to apologize to this respondent for offenses he had not committed, and with one of which—the newspaper article—he had not even been formally charged.

And so, with one side of his face distorted and one eye closed by paralysis, sick and suffering, he was blackguarded from the bench and hurried away to a prison cell even before a commitment could be made out. And the O'Neal case is even worse.

I shall not stop to refer to those other charges. They will be fully covered by others who will follow me.

We have no feeling against this respondent. Most of us never saw him until he appeared at this bar. We should be glad if we could believe that the evidence in this case shows him worthy to wear the breastplate of judgment upon his heart; but feeling as we do, viewing the case as we do, we ask you, in the name of all the people of the United States, in whose behalf we appear and who are paying more attention to this case than many may imagine, to render such judgment that those who hereafter may observe the course of judicial conduct in the northern district of Florida or study these proceedings and consider the precedent you are about to establish may never have occasion to exclaim in the sad and pathetic language of Isaiah, the prophet, that "judgment is turned away backward and justice standeth afar off."

Mr. FAIRBANKS. Mr. President, I move that the Senate sitting in the trial of the impeachment adjourn to meet at 12 o'clock to-morrow.

The PRESIDING OFFICER. The Senator from Indiana moves that the Senate sitting in the trial of the impeachment of Charles Swayne now adjourn to meet at 12 o'clock to-morrow.

The motion was agreed to; and (at 10 o'clock and 15 minutes p. m.) the Senate sitting for the trial of the impeachment adjourned until to-morrow, February 24, at 12 o'clock m.

The managers on the part of the House and the counsel for the respondent retired from the Chamber.

IN THE SENATE, *February 24, 1905.*

The PRESIDENT pro tempore. The hour of 12 o'clock having arrived, to which the Senate sitting as a court of impeachment adjourned, the Senator from Connecticut [Mr. Platt] will please take the chair.

Mr. PLATT, of Connecticut, assumed the chair.

The PRESIDING OFFICER (Mr. Platt, of Connecticut). The Senate is now sitting in the trial of the impeachment of Charles Swayne, United States judge in and for the northern district of Florida. The Sergeant-at-Arms will make proclamation.

The Sergeant-at-Arms made the usual proclamation.

The PRESIDING OFFICER. The Sergeant-at-Arms will ascertain whether the managers on the part of the House are in attendance.

The managers on the part of the House of Representatives appeared, and were conducted to the seats assigned them.

The PRESIDING OFFICER. The Sergeant-at-Arms will ascertain whether the respondent and his counsel are in attendance.

Judge Charles Swayne, accompanied by Mr. Higgins and Mr. Thurston, his counsel, entered the Chamber and took the seats assigned them.

The PRESIDING OFFICER. The Journal of the proceedings of the last trial day will be read.

The Secretary proceeded to read the Journal of the Senate sitting for the trial of impeachment of Charles Swayne, Thursday, February 23.

Mr. BACON. Mr. President, in the interest of saving time, unless there be objection on the part of some Senator, I would suggest the omission of the further reading of the Journal.

Mr. McCREARY. The Journal has been read every morning during this trial, and I hope we will not now depart from that rule.

Mr. ALLISON. It is impossible to hear the colloquy.

The PRESIDING OFFICER. The Senator from Georgia [Mr. Bacon] suggested the omission of the reading of the rest of the Journal, but the Senator from Kentucky [Mr. McCreary] thinks that the Journal ought to be read in full. The Secretary will resume the reading of the Journal.

The Secretary resumed and concluded the reading of the Journal of the Senate sitting for the trial of impeachment of Charles Swayne, Thursday, February 23.

The PRESIDING OFFICER. The Presiding Officer noticed as the Journal was being read that it was not complete as to a ruling with reference to the introduction of evidence; and the journal clerk will be required to correct it to make it conform to the facts, if there be no objection.

Mr. NELSON. Mr. President, I desire to call attention to the omission of one motion. After the Sergeant-at-Arms had been directed to send for the absentees, the Senator from New Hampshire [Mr. Gallinger] moved that further proceedings under the call be dispensed with. That motion is omitted in the Journal. It ought to be inserted, following the motion I made, to which reference is made, in order to make the Journal complete.

The PRESIDING OFFICER. If that motion is not already in the Journal, the Journal will be corrected. Are the managers ready to proceed with the argument?

Mr. Manager PERKINS. Mr. President, I shall speak on one question only of the articles of impeachment against Charles Swayne, and that is the question of residence. And first, Mr. President, I wish to say a word, and but a few words, in reference to the claim made that this article does not present an impeachable offense. It is alleged in the answer of the respondent that the sixth and seventh articles do not state an impeachable offense. My associate, Mr. Olmsted, last night, perhaps with sufficient fullness, discussed the question of impeachable offenses, but I will add a word in reference to the article which it is my duty to discuss.

The argument made in behalf of the respondent is this: That a judge, under the precedents of the English courts, can not be impeached for any act except one done in the course of his duty as a judge; and that the sixth and seventh articles do not charge an omission of duty as a judge, but an omission of duty as an individual.

Mr. President, this can best be answered by an illustration of what is the logical and necessary result of the argument on the other side, that a judge of the United States court can not be impeached by the

Senate of the United States unless for some strictly judicial act. Let us suppose that a judge commits a crime; that he forges a note; that he embezzles money. He is indicted and tried and convicted in the State courts of these crimes and sentenced to bear the punishment. Then it is sought to remove him from office by impeachment. The judge having committed these crimes is impeached. He employs my learned friends on the other side, and they claim before the Senate then, as they claim now, that the Senate has no power to impeach a judge except for acts done as a judge.

They say, and say justly, that when this judge forged a note, or embezzled money, he was not acting as a judge, but as an individual. And if the argument be just, we have this extraordinary conclusion: A judge can not be removed except by impeachment. The judge, for the crime committed in his private capacity, is serving his term in State's prison. As he marches to perform hard labor, he will once a month receive the consolation of opening the envelope containing the check which will be monthly sent to him to pay him his salary as a judge of the United States court. Such a result shows the absurdity of the position.

The English cases are cited, but in England, apart from the remedy by impeachment, a judge can be removed for any cause deemed sufficient by a bill of attainder. That is unknown in this country. Bills of attainder were not put in our Constitution, and the remedy by impeachment by the Senate is the sole remedy by which a judge can be removed.

But a word more. What offense is Judge Swayne charged with? It is that he did not reside within his district. The law could not say that Judge Swayne as an individual should reside in the northern district of Florida or anywhere else, but the law says that when he is a judge he, because he is a judge, shall reside within his district; and when he failed so to do he omitted a judicial requirement made of him just as much as if he had sold justice or made unrighteous decisions.

I shall say no more on that point, but come at once to what is the important, the great question in this case—not whether the offense is impeachable, but whether the offense was committed. It has already been suggested that a judge of the United States courts is the one officer in the land who holds his office by a life tenure. He can not be removed by the people. He can not be removed by the President. Nothing but the act of God or the vote of the Senate can remove a man who holds the office of United States judge. His dignity is great; his responsibility is correspondingly great. The people who complain, the people who lack confidence in their judges, can look to the Senate, and can look here alone, for relief. If they can not get it here they can not get it anywhere.

I think it is the experience of every member of this body who is a lawyer, and perhaps of many who are not lawyers, that the tendency of a community is to bear patiently with and unusually to reward with approval its judges. There is no tendency to harsh criticism of a judge as there often is of a man in political life. The tendency of the bar is to stand by the court, to overlook minor defects and minor failings, to support the judiciary. The tendency of the entire community is to look up with a respect that sometimes is excessive to a man who holds the position of judge.

It is therefore worthy of consideration that there comes before this

body, not a prosecution started by some individual, not a prosecution growing out of personal grievances, but that the people of a sovereign State, the people of the State of Florida, by, I believe, a unanimous vote of their legislature have come before this body and say that they regard Charles Swayne as an unfit man to hold the office of judge, and ask that he be removed.

Now, why, under the count which I have to consider, should he be removed? In this surely every member of the Senate will agree with me: A judge is a man whose duty it is to enforce the law. He has the power, and it is his duty to punish those who offend against the law. Certainly the man upon whom is thrown the great responsibility of enforcing the law should himself be the first, the most vigilant, the most earnest, the most careful and conscientious to obey the law. The criminal who is accused of having offended the law of the land should not have his case passed upon by a judge who himself neglects to obey the law of the land.

The statute in this case is very simple and very plain. The man that runs may read. It needed no one learned in the law to understand what is the requirement put upon a judge of a district court of the United States. In a statute passed by the Congress of the United States it is said:

Every district judge shall reside in the district to which he is appointed, and for offending against this provision shall be guilty of a high misdemeanor.

It needs no argument to show that this offense is impeachable. Congress by its express act has said that the judge who does not comply with this requirement shall be guilty of a high misdemeanor.

Now, the reason for that statute is perfectly plain, and it has been declared by the courts. It is that a judge may be in his district, so that litigants may conveniently, easily, economically have recourse to the court at any time to secure the orders or the relief which it is a judge's duty to grant.

Without occupying the time of the Senate by any long legal discussion, I wish to read just a word, which will emphasize the point I make in reference to what is meant by this statute. The rule is familiar that in construing a statute courts consider the object of the statute.

In a case in Colorado, where a similar statute was passed upon in reference to a judge, the court said—and in reading a sentence from the opinion I can say much more than I could in ten minutes of my own argument:

The provision that a judge shall reside within his district manifestly was not intended for his convenience—

Mark that!

was not intended for his convenience, but for the benefit of the people whose servant he is. The object of the statute was to compel the officer to maintain his residence where litigants might expeditiously, with as little expense as possible, have access to him for the transaction of official business; and the word "residence" here means an actual as distinguished from a constructive residence

There are abundant other cases laying down the same rule, with which I shall not weary the Senate. The word "residence" is defined in the dictionary. To take a residence a man shall go to a place and take up his abode there. That is what is required; that Judge Swayne—and you will see afterwards whether the law was complied with—should go to Florida and take up his abode there. A resident,

it is said, is one who comes to a place with intent to reside there. I shall say something about Judge Swayne's intention. But the law says he shall not only come to a place with intent to reside, but in consequence of the intent shall actually reside there. That is the law; that the judge shall be actually in his district; that if he has any intent to reside there that intent shall be carried into effect, so that an actual residence shall be taken.

What are the facts? The Senate of the United States must say either that Judge Swayne was or Judge Swayne was not, from 1894 until the fall of 1900, a resident, within the meaning of this law, of the northern district of Florida. If he was a resident, if the Senate shall say as matter of fact that Judge Swayne from 1894 to 1901 was a resident of the northern district of Florida, then, of course, our case goes for nothing on this branch. If, on the other hand, it shall say as matter of fact that he was not a resident, then the law steps in and says that if he was not a resident during those years he was guilty of a high misdemeanor by the express wording of the statute.

Mr. President, I submit that if this was a case to be tried before a judge and jury there would not be enough evidence of Judge Swayne's actual residence within the northern district of Florida to go to the jury.

What did he do? Residence is a thing easily to be understood, and the evidence in this case is uncontradicted. We have here the record. Witness after witness testified that Judge Swayne came from 1894 to 1900 within his district only when he held court. He came there the night before; he left there the day after. He was within his district only when he held his court. How long did he hold his court? We have here the official record. The witnesses testified three or four weeks, or six weeks, or eight weeks, but I have here the official record. In 1895, for instance, Judge Swayne held court in his district in all thirty-eight days, eight days in Tallahassee and thirty days in Pensacola; in 1896, thirty-one days; in 1897, only twenty-one days; in 1898, twenty-five days. If that makes a residence, any drummer who goes to a town and stays there twenty or thirty days until he has finished selling his goods is a resident and can claim the privileges of a resident.

Judge Swayne did not have his family there. He did not have his effects there. He did not have his property there. His only property was the trunk which, instead of the carpet bag, the witness said he brought with him. He brought it in and took it out. Mr. President, I can not imagine how there can be any claim that that could constitute the actual residence which is required under the law.

Let us look for a moment at the answer. The answer of the respondent says that shortly after 1894 he became a resident of his district. But no time is stated. No time is stated because no time could be stated. There is not one line of evidence in this volume by which anyone up to 1900 can point his finger on the time and say Judge Swayne then became a resident of the northern district of Florida.

But let us go a little further. The admissions of Judge Swayne were excluded when they were offered in court. We have not the benefit of his evidence in this case, though we sought to have it; but we have one or two facts proved outside to which I ask the very careful attention of the Senate. Judge Swayne says, "I regarded myself as a resident of Pensacola in 1894." We called witness after witness who said they did not know he was a resident; that he had no indicia

of residence or dwelling there. The fact that from 1894 to 1898 or 1900 Judge Swayne was a resident of Pensacola was at that time known to no man in the world except Judge Swayne himself. Locked in his bosom, and there alone, was the knowledge that Charles Swayne was a resident of Pensacola.

Now, let us see a little. We have him first stopping with Captain Northrup, and finally he goes to the Escambia Hotel. When you come to pass upon the question whether Charles Swayne from 1894 to 1898 was a resident of Pensacola and obeyed the law, or was not a resident and violated the law, let us see what Charles Swayne did. Saturday, May 28, 1898, he wrote on the hotel register, with his own hand, "Charles Swayne, St. Augustine, Fla." Now, that certainly is a very extraordinary condition of affairs. For four years, if we can believe the position of the respondent, he had been a resident of Pensacola and he did not know it. Four years after Judge Swayne had not realized the fact, or he had forgotten the fact, that he was a resident of Pensacola. For these four years, as I have said, only God and Judge Swayne knew he was a resident of Pensacola. In 1898 Judge Swayne himself had forgotten the fact. The knowledge remained only with omniscience.

The guardians of the peace at night say they sometimes find a man in such a condition that he can not tell where he lives. It is the result of a career of pleasure carried on too long and carried too far. But this case is unique. Here in broad daylight, having imbibed, I dare say, no concoction more stimulating than clear, cold ice water, Judge Swayne did not know where he lived. If the Senate of the United States finds that Judge Swayne has not violated this statute, finds that he was a resident of Pensacola, Fla., from 1894 to 1898, it discovers a fact that was unknown to Judge Swayne himself. Can such a finding be made? Would such a finding be justice, or would it be a travesty on justice?

But, Mr. President, of course Judge Swayne knew where he lived in 1898 as well as any member of the Senate knows where he lives. He was no more apt to make a mistake in that than would any member of the Senate be to make a similar mistake. The fact was that he did not want—now we come to the question of intention—to go to the northern district of Florida. First he was angry at the law. He thought it was an unfair law, and he hoped a Republican Congress would repeal it. He did not like the people because the people did not like him. He wanted to hold onto the office, but he did not want to comply with the requirement of living in the district where he must hold his office. His duty was plain. If he did not like the politics or the society or the climate of the northern district of Florida, he should have resigned his position; but he could not hold on to the emoluments of the office and at the same time refuse to comply with the requirements which the office made.

I wish to call attention for just a moment to a most pertinent question put by one of the Senators from Texas to several witnesses bearing on the question of residence.

Did Judge Swayne exercise any right in, perform any duty, or take advantage of any privilege of a resident of the State?

Mr. President, he exercised no right; he cast no vote; he paid no tax; he brought no property into the State and had no property in the State; he performed no duty resting upon a citizen. The wit-

nesses answered this question "No;" but they did not answer it accurately. Did he exercise a right? No. Did he perform a duty dependent upon his residence? No. Did he take advantage of any privilege of a resident of the district? That is what he did. He took advantage of the privilege which said a resident of that district and only a resident of that district should be a judge of that district.

Now, what was his intention? In the first place, as I have said before—and I shall not waste my time, which is rapidly running away, by citing authorities—intention is of importance when it gives an interpretation to acts. A man does a certain thing; the intention with which he does it is to be considered; but nobody ever held that intention unaccompanied by acts amounted to anything. Can I say it is my intention to live in San Francisco and thereby make myself a resident of San Francisco except by going there? If I go there, my intention, whether I shall stay and whether I shall become a resident there, is to be considered. But I can not make myself a resident of any place by saying that it is my intention to reside there. If so, a man could be a resident of any place in the world. He would need only to say that his intention was to go to this or that place and there reside.

There has been some evidence given about what was done in reference to the renting or purchase of houses. The judge had a reasonable time to make a change when the district was changed. He was not bound to start the next morning and go to Pensacola, but he was bound to do so within a reasonable time; and no man can say that it was reasonable and that it was not an evasion of the law for a judge to take seven long years, more than the term of a Senator of the United States, before he made up his mind what house would suit him.

You have heard the evidence as to the house he wanted—a 40-foot parlor, and heaven knows what not—a style of house not found in Pensacola. A judge has not the right to say that he will only live in a palace or in the mansion of a Vanderbilt, or in such a house as can not be found in his district, before he will go there. He is bound to look around and to exercise reasonable good faith in going.

What did he do? Mr. Marsh, his own witness, said he made some effort in 1896 and 1899, and then for two long years he ceased the quest, because Judge Swayne's family was somewhere else. That did not exempt him from the requirement of the law to become a resident.

Let me say another word bearing on good faith. It was proved that the people of Tallahassee asked Judge Swayne to go there and live. So it was evident that there was a city in his district desirous of obtaining the privilege of his residence and doubtless glad and willing to furnish such facilities as he might require. He said he would not go. He had a right to say he would not go to Tallahassee. He said his intention was to go to Pensacola. He had a perfect right to say, "I do not want to go to Tallahassee, but I do want to go to Pensacola." But, Mr. President, he had no right in good faith to say, "I will not go to Tallahassee, because I want to go to Pensacola," and then not go to Pensacola. He had not the right in 1895, at the time of the invitation to Tallahassee, to decline that because he preferred Pensacola, and then for six long years after that not go to Pensacola.

But another thing let me call the attention of the Senate to, Mr. President, that bears certainly upon the question of Judge Swayne's good faith. He knew this law, and for seven long years from July,

1894, to the fall of 1900, he was in no sense a resident of the northern district of Florida. If he became a resident by going there and writing his name in the hotel register, anybody can do that. Let us see, now, as bearing upon the question of good faith, the gradual change in his conduct. In 1898 he registered his name as being a resident of the other district.

Mr. Manager PALMER. St. Augustine.

Mr. Manager PERKINS. St. Augustine. Consider this when you are considering the question of Judge Swayne's good faith in actually obtaining a residence. In 1899 how does he register his name? He omits St. Augustine for the first time in the latter part of 1898 and writes, "Charles Swayne, Florida." Well, that is consistent with St. Augustine; that is consistent with Pensacola; that is consistent with anything. In the latter part of 1899, when there had been no possible change in what he did, when he had rented no house, when he stayed only for the terms of the court, for the first time he wrote his name "Charles Swayne, City," and the only proof in this case that Charles Swayne became a resident of Pensacola down to the latter part of 1900 is the fact that he wrote his name "Charles Swayne, City."

Now, Mr. President, it is for the Senate to fix the law. If a man can become a resident by saying "I am going to be a resident," "I have an internal conviction I have become a resident," and by going to a tavern and writing his name "John Doe, City," it opens a new field. In our city of New York there is a business known as "colonizing." Citizens come over from Connecticut and come over from New Jersey to the city of New York to cast their votes where they will do the most good. If it shall be established by this great tribunal that a man can come from Connecticut or New Jersey and write his name in a hotel register "John Doe, City," and say before the court "My intention is to come to New York; I regard myself as a resident of New York," and therefore become a citizen of New York, the number of votes cast in the city of New York on critical occasions will be largely augmented.

I will say just a word or two more, as I must very soon close. Some evidence has been given about Guyencourt. Witnesses were called to show that the respondent did not live in Guyencourt. We do not care whether he lived in Guyencourt or whether he did not. All that the people have to establish, to sustain, is the fact that he did not live in the northern district of Florida.

Evidence was given as to his family coming there. His wife was there, during a long period of seven years, on two or three occasions for ten days. If Judge Swayne was living in Florida, certainly he was not living with his wife. The evidence shows that when he went to hold court in New Orleans and in other places there also his family visited him in the same way. He was as much a resident of New Orleans as he was a resident of Pensacola, if this is to be the test.

What the law requires is the actual presence of the judge for the purpose of convenience. What Judge Swayne sought to give was a metaphysical abstraction, not his presence there for the needs of the district, but the conviction in his own mind that he would become a resident of the district so far as to hold the office.

We were not allowed to give evidence of the inconvenience of his absence, which is all right, because the statute is explicit, but let me call attention just to a figure or two, as showing that the law was a

reasonable law, that if the judge had been there more there would have been more work for him to do. In 1895 he held court in Pensacola thirty days, in 1896 twenty days, in 1897 twenty-two days, in 1899 forty days, in 1900 thirty-two days.

But mark the difference, and I shall say a word about that before I close. He took a house in Pensacola in 1901. In that year he held court sixty-one days. There was business for Charles Swayne to do in Pensacola sixty-one days in 1901, and there was no more business in that town in 1901 than there was in 1895, except that the judge was there in 1901, and he was not there in 1895. On an average, the last three years he held court in Pensacola twice the number of days that he did in 1894, 1895, and 1896. It shows the reason of the statute, that when the judge was there the judge had work to do, and when the judge was not there the work had to be done in some other way.

Taking a period of nine years, which of course gives him the average of the three years while he was there most, Judge Swayne was in Pensacola fifty days a year holding court. Take the first seven years covered by our count, and he did not average over thirty-two or thirty-three days; and this court is asked to find that a judge who holds a court in a town for thirty-three or thirty-four or thirty-five days on an average, comes the night before and leaves the morning afterwards, becomes a resident of the district within the meaning of the statute. If so, the statute is a farce and an empty form of words.

Let us consider another thing as bearing upon the intent and good faith of the judge. During all these seven years he rented no house, he bought no house, he made no purchase. When a house was offered to him, when Tallahassee offered to him a residence, it did not suit him. When houses were offered in Pensacola they did not suit him. He stayed no more in Pensacola; he had no more interest in Pensacola in 1900 than in 1894. But finally comes the change. The discontent that had been growing in the northern district of Florida began to grow stronger and stronger.

In the fall of 1900 Judge Swayne rented a house. It does not appear how much he stayed there. He did not rent a house with a 40-foot parlor or his other sumptuous demands; but in 1900 he was willing to rent a house.

In the spring of 1903 the resolution of the legislature of the State of Florida that Judge Charles Swayne should be impeached was passed, and within one month after that was passed he bought a house and made himself a legal resident of the district. Is that evidence of good faith? If the man who for seven long years neglected to obey the law because he thinks he can do it safely, conforms to the law within one short month when danger is coming, does that show good faith? A common criminal—a common, vulgar, ignorant criminal—pursues his calling when the road is clear, and he runs to shelter when the officers of the law are hot in his pursuit. What is the difference when a man of higher position, a man of learning, omits to comply with the law for seven long years when no man pursueth and in one month complies with the law when at last against him the majesty of the law is invoked?

How long have I spoken, Mr. President?

The PRESIDING OFFICER. Forty-two minutes.

Mr. Manager PERKINS. That is already two minutes more than I desired to speak, and I shall say but a word more in closing. This

body possesses great powers, and as a result is subject to great responsibilities. It is the only body by whom the conduct of the judiciary of the United States, one of the estates of the land, can be judged. This case is important not only to Judge Swayne, but to the judiciary of the land. Future judges will live up or will live down to the standard which this Senate places for judicial conduct. If you say that a judge may for years disregard, disobey, evade, fail to comply with the provisions of a law because it does not suit his taste or his convenience or his comfort; if you say that when the Senate of the United States, as one of the coordinate branches of Congress, has passed a law which says that the judge shall reside within his district, and that in failing to do so he shall be guilty of a high misdemeanor, that law may be disregarded and the Senate will not call it amiss, then you will say that Judge Swayne should be acquitted of the charge that is made against him. But if you say that the law that binds all should bind first of all and most of all those officers who are the sworn interpreters and executors of the law, then you will say that the demand that has been made by the people of the State of Florida, by their legislature, and by all the people of the United States by their House of Representatives, should be granted, and that the respondent should no longer fill that high office which he holds.

Mr. Manager CLAYTON. Mr. President, to every man who loves his country it must be a pleasant reflection that the power of impeachment has been so infrequently invoked. This infrequency is true in regard to the judiciary, and the fact is highly creditable to the people and to the judiciary itself. It argues that the judges, as a rule, have always deported themselves in such a manner as to merit and keep the confidence of the public. It evidences the further fact that the people have a respect for the judicial branch of our Government that amounts to a reverence.

Mr. President, I am aware of the conditions now existing that render the time of the Senate so precious. I shall therefore not waste any time in a useless panegyric upon this tribunal. I wish, however, to advert briefly to some of the extraordinary powers possessed by the Senate. As a part of the legislative branch of the Government, it shares with the House the law-making power. It also shares with the executive department of the Government the treaty-making power, which is in some sort a law-making power, and shares also with the Executive the appointing power. Further than this, it is clothed with the extraordinary function of sitting in an impeachment case as a court, and has the power to scrutinize and bring to the bar of judgment the judges who fail to discharge the duties incumbent upon the judiciary.

The wisdom of clothing the Senate with all these powers has been demonstrated more and more as time has gone by and as emergencies have arisen. Hasty and inconsiderate legislation proposed from other quarters is here deliberated upon and is here considered as the fathers intended all legislative enactments should be considered. The rashness of the Executive, whenever that has been manifest in the exercise of any of the powers belonging to the Executive, has received the just disapproval by this great body, and the judiciary, appointed for and during the term of good behavior, amenable not to the Executive, amenable not to the people themselves directly, can alone be rebuked or scourged from the temple of justice by the Senate. There is no power of removal lodged elsewhere.

Mr. President, I desire to call attention to the fact that repeatedly in impeachment trials before the Senate it has been asserted that civil officers can not be impeached except for the commission of indictable offenses, but it was never before this time seriously contended that a judge can not be impeached except for wrongful conduct committed strictly in the performance of an act purely judicial.

Therefore in this case we are brought to a consideration of what is an impeachable offense. The Constitution denounces impeachable offenses under the terms of "treason, bribery, and other high crimes and misdemeanors." "Other high crimes and misdemeanors" are general terms, and for their import and meaning reference may be had to English jurisprudence and parliamentary law, to the provisions of the constitutions of the several States relating to impeachments in existence prior to and at the time of the adoption of the Federal Constitution, and to the interpretation put upon the words in the debates in and by the action of the United States Senate in impeachment cases which have heretofore been tried.

In the present case the House of Representatives has charged this judge with crimes and misdemeanors, and also contends that he has forfeited his tenure of office because he has not conformed to the good behavior required by Article III, section 1, upon which his right to hold office is predicated. The judge is entitled to hold his office during good behavior, but not otherwise. The provision of the Constitution conversely stated would be that he shall not hold office after having been guilty of misbehavior. If I understand the contention of the counsel for the respondent here, they insist that high crimes and crimes and misdemeanors and the words "the judges both of the Supreme and inferior courts shall hold their offices during good behavior" are limited or restricted to such acts as may be committed by a judge in his purely judicial capacity. In other words, however serious the crime, the misdemeanor, or misbehavior of the judge may be, if it can be said to be extra judicial he can not be impeached. To illustrate this contention, the judge may have committed murder or burglary and be confined under a sentence in a penitentiary for any period of time, however long, but because he has not committed the murder or burglary in his capacity as judge he can not be impeached. That contention, carried out logically, might lead to the very defeat of the performance of the function confided to the judicial branch of the Government.

In the History of the Constitution of the United States, by George Ticknor Curtis, in volume 2, page 260, is found this language:

The purposes of an impeachment lie wholly beyond the penalties of the statute or the customary law. The object of the proceeding is to ascertain whether cause exists for removing a public officer from office. Such a cause may be found in the fact that, either in the discharge of his office or aside from its functions, he has violated a law or committed what is technically denominated a crime. But a cause for removal from office may exist when no offense against positive law has been committed, as when the individual has from immorality or imbecility or maladministration become unfit to exercise the office.

In the Commentaries on the Constitution of the United States, by Roger Foster, volume 1, page 569, this statement is made:

The object of the grant of the power of impeachment was to free the Commonwealth from the danger caused by the retention of an unworthy public servant.

Again, on page 586, this statement:

The Constitution provides that "the judges, both of the Supreme and inferior courts, shall hold their office during good behavior."

This necessarily implies that they may be removed in case of bad behavior. But no means except impeachment is provided for their removal, and judicial misconduct is not indictable by either a statute of the United States or the common law.

Again, on page 591, this statement:

An impeachable offense may consist of treason, bribery, or a breach of official duty by malfeasance or misfeasance, including conduct such as * * * an abuse or reckless exercise of a discretionary power.

In Rawles on The Constitution, page 201, in speaking of the court of impeachment, it is said:

The subjects of its jurisdiction are those offenses which proceed from the misconduct of public men, or in other words, from the abuse or violation of some public trust.

In Story on The Constitution (5th edition), section 796, it is said:

Is the silence of the statute book to be deemed conclusive in favor of the party until Congress have made a legislative declaration and enumeration of the offenses which shall be deemed high crimes and misdemeanors? If so, then, as has been truly remarked (citing Rawles on The Constitution), the power of impeachment, except as to the two expressed cases, is a complete nullity and the party is wholly dispensable, however enormous may be his corruption or criminality. It will not be sufficient to say that, in the cases where any offense is punished by any statute of the United States, it may and ought to be deemed an impeachable offense. It is not every offense that by the Constitution is so impeachable. It must not only be an offense, but a high crime and misdemeanor.

The further answer to this contention may be that it is repugnant to the Constitution, which especially provides for the impeachment of a civil officer for high crimes and misdemeanors, and especially provides that the judge shall hold his office during good behavior.

Again, it is repugnant to the spirit and genius of our institutions; and if it were correct, it would be to throw around the judge, as a civil officer, a protection not afforded any other officer under the Government. It is also repugnant to the precedents in impeachment trials before the Senate, to the precedents in impeachment trials in the different States that had similar provisions in their constitutions and had had impeachment trials before the adoption of the Federal Constitution.

Any civil officer can be impeached. The President of the United States can be impeached. The removal from office can be had in respect to any officer under the Government, and it would be an anomaly to say that in a free representative Government the people are deprived of the power and the right to remove from office an unworthy officer. If it be true that a judge can not be impeached except for what he may have done strictly in his capacity as judge, then this extraordinary protection is afforded to him: He is put upon a pedestal by himself; he is raised above the military, because they can be tried and gotten rid of; he is raised above the Executive, for he can be tried by impeachment and removed from office; he is raised above the members of the Senate and the Members of the House of Representatives, for they may be expelled upon a two-thirds vote of the members of their respective bodies. I say it would be an anomaly. So far as the power of getting rid of an unworthy official is concerned, if that contention be correct it would be a hiatus in the power of government.

Did the fathers intend that it should ever come to pass that an unworthy officer, although a judge, guilty of murder or burglary or

any other disgraceful crime which brings his high position into disrepute, can wrap a mantle of protection around him and say, "Although I am guilty of an infamous crime, I did not commit it in my judicial capacity, and therefore, convicted felon though I am, I can continue to be judge and to draw the emoluments of that high office?" I do not believe that this contention has ever been made in any of the cases heretofore presented to the Senate.

In Judge Pickering's case it will be remembered that he was accused of drunkenness. He was also accused of releasing a ship which had been libeled without requiring bond. It might be argued that he did not get drunk in his official capacity; and yet the Senate in that case did impeach him and remove him from office, and that was one of the charges.

In the case of Judge Humphreys, the other judge who was convicted and removed from office, the charge was that he had made secession speeches and that he had acted as a judge of a Confederate court. Certainly he did not make secession speeches in his capacity as a judge of the United States court. It was not done in the trial of any cause before him. He did that in his individual capacity, and yet the Senate did vote to convict him, and did remove him from office, because, among other things, he had made these speeches and had held and exercised the office of a Confederate judge during the civil war.

I have here Foster on the Constitution. I will not tax the patience of the Senate by reading it; but, availing myself of the privilege heretofore referred to, I shall ask to have inserted in the record that portion of the text which I have marked.

The PRESIDING OFFICER. Without objection the matter referred to will be so inserted in the record.

The extract referred to is as follows:

The only difficulty arises in the construction of the term "other high crimes and misdemeanors." As to this, four theories have been proposed: That, except treason or bribery, no offense is impeachable which is not declared by a statute of the United States to be a crime subject to indictment. That no offense is impeachable which is not subject to indictment by such a statute or by the common law. That all offenses are impeachable which were so by that branch of the common law known as the "law of Parliament." And that the House and Senate have the discretionary power to remove and stigmatize by perpetual disqualification an officer subject to impeachment for any cause that to them seems fit. The position that, except treason or bribery, no offense is impeachable which is not indictable by law was maintained by the counsel for the respondents on the trials of Chase and Johnson. * * *

The first two theories are impracticable in their operation, inconsistent with other language of the Constitution, and overruled by precedents. No crime, save treason and bribery, not forbidden by a statute of the United States, will support an impeachment; then almost every kind of official corruption or oppression must go unpunished. Suppose the Chief Justice of the United States were convicted in a State court of a felony or misdemeanor, must he remain in office unimpeached and hold court in a State prison?

The term "high crimes and misdemeanors" has no significance in the common law concerning crimes subject to indictment. It can be found only in the law of Parliament, and is the technical term which was used by the Commons at the bar of the Lords for centuries before the existence of the United States.

The Constitution provides that—

"The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior."

This necessarily implies that they may be removed in case of bad behavior. But no means except impeachment is provided for their removal, and judicial misconduct is not indictable by either a statute of the United States or the common law.

In 1803 Pickering, a district judge of the United States, was convicted on impeachment for his official action in surrendering to the claimant, without requiring the

statutory bond, a vessel libeled by the United States, for refusing to allow an appeal from this order, and for drunkenness and profane language on the bench.

None of these offenses was indictable by the common law or by statute.

Humphreys, a district judge of the United States, was convicted on impeachment, not only for treason, but also for refusing to hold court, for holding office under the Confederate States, and for imprisoning citizens for expressing their sympathy with the Union. The managers of the House of Representatives who opened the case admitted that none of these offenses except the treason was indictable.

Some advocates have gone so far as to maintain by a misapplication of a term of the common law that the proceedings on an impeachment are not a trial, but a so-called "inquest of office," and that the House and Senate may thus remove an officer for any reason that they approve. That Congress has the power to do so may be admitted. For it is not likely that any court would hold void collaterally a judgment on an impeachment where the Senate had jurisdiction over the person of the condemned. And undoubtedly a court of impeachment has the jurisdiction to determine what constitutes an impeachable offense. But the judgments of the Senate of the United States in the cases of Chase and Peck, as well as those of the State senates in the different cases which have been before them, have established the rule that no officer should be impeached for any act that does not have at least the characteristics of a crime, and public opinion must be irremediably debauched by party spirit before it will sanction any other course.

Impeachable offenses are those which were the subject of impeachment by the practice in Parliament before the Declaration of Independence, except in so far as that practice is repugnant to the language of the Constitution and the spirit of American institutions. An examination of the English precedents will show that, although private citizens as well as public officers have been impeached, no article has been presented or sustained which did not charge either misconduct in office or some offense which was injurious to the welfare of the state at large.

In this class of cases, which rests so much in the discretion of the Senate, the writer would be rash who were to attempt to prescribe the limits of its jurisdiction in this respect.

An impeachable offense may consist of treason, bribery, or a breach of official duty by malfeasance or misfeasance, including conduct such as drunkenness, when habitual or in the performance of official duties, gross indecency, and profanity, obscenity, or other language used in the discharge of an official function which tends to bring the office into disrepute, or an abuse or reckless exercise of a discretionary power, as well as a breach or omission of an official duty imposed by statute or common law; or a public speech when off duty which encourages insurrection. It does not consist in an error in judgment made in good faith in the decision of a doubtful question of law, except, perhaps, in the violation of the Constitution.

Mr. President, I do not desire to dwell longer upon any preliminary phase of this case. I want to come immediately to the case of contempt charged against Belden and Davis. Prior to the trial of the Peck case in 1831 the judges of the United States courts had held—and it was ascertained in the argument of counsel for Judge Peck in that case—that the judges of the Federal courts were clothed with inherent power to determine and punish contempts; that their power—I believe the language of one of the counsel in that case was—so far as saying what should constitute a contempt was plenary; that they had as wide discretion and as full power as the English judges had, or as the judges in the different States possessed where the common law obtained.

The Senate seemed to have concluded in that case that this doctrine of inherent power in that regard was correctly applied to the Federal courts; and although Judge Peck had imprisoned a lawyer for publishing a criticism of his opinion—and it was conceded, I think, by impartial men to have been a just and fair criticism—although he had put this man in jail, treating that as a contempt of his court and for that offense had imprisoned him, yet that, the power of the court in that regard being unlimited, the discretion of the Federal judiciary being as wide as that of the English judiciary or as that of State judiciary, he could not be impeached for that offense.

That gave rise to the legislation under which Judge Swayne imposed a fine upon and deprived Belden and Davis of their liberty. I will not stop here to comment upon the severity of that punishment. It was an unlawful double punishment and out of all proportion to what they were charged with having done. But he punished them under this legislation and had no authority whatever under any other provision of law.

Following the Peck case, and after the judgment of acquittal had been rendered, Mr. Buchanan, who was then chairman of the Judiciary Committee of the House of Representatives, reported to the House the bill which embraces this law, and it passed there and also passed the Senate. It can be found in the back of the bound volume of the Trial of Judge Peck. It is there in the original text with the notation, the substance of which I have just recited. It is entitled "An act declaratory of the law concerning contempts of court," and provides:

SEC. 1. That the power of the several courts of the United States to issue attachments and inflict summary punishment for contempts of court shall not be construed to extend to any cases except the misbehavior of any person or persons in the presence of the said courts, or so near thereto as to obstruct the administration of justice, the misbehavior of any of the officers of the said courts in the official transactions, and the disobedience or resistance by any officer of the said courts, party, juror, witness, or any other person or persons, to any lawful writ, process, order, rule, decree, or command of the said courts.

That section in this act is brought forward and can now be found in section 725 of the Revised Statutes.

The second section of this statute provides:

SEC. 2. That if any person or persons shall corruptly, or by threats or force, endeavor to influence, intimidate, or impede any juror, witness, or officer, in any court of the United States, in the discharge of his duty, or shall corruptly, or by threats or force, obstruct or impede, or endeavor to obstruct or impede, the due administration of justice therein, every person or persons so offending shall be liable to prosecution therefor by indictment, and shall, on conviction thereof, be punished by a fine not exceeding \$500 or by imprisonment not exceeding three months, or both, according to the nature and aggravation of the offense.

That section is brought forward into the Revised Statutes, and may be found in section 5399.

The first section of this act is the law under which Judge Swayne proceeded against Belden and Davis, as I have stated. The second section, according to the view of the managers, is the law under which O'Neal should have been punished. O'Neal did not commit an act denounced in the first section of this statute or in section 725 of the Revised Statutes. He was not an officer of the court and he was not resisting or disobeying any process of the court. There the act was not committed in the presence of the court; it was not so near thereto as to obstruct the due administration of justice. The court was not in session; the judge was not in Florida. Conforming to his usual custom, he had gone elsewhere. But I shall not stop to dwell upon the O'Neal case, for one of the managers who is to follow me will do that.

I will read section 8 of the articles of impeachment. It is as follows:

ART. 8. That the said Charles Swayne, having been appointed, confirmed, and duly commissioned as judge of the district court of the United States in and for the northern district of Florida, entered upon the duties of said office, and while in the exercise of his office as judge as aforesaid, to wit, while performing the duties of a judge of a circuit court of the United States, heretofore, to wit, on the 12th day of November, A. D. 1901, at the city of Pensacola, in the county of Escambia, in the State of Florida, did maliciously and unlawfully adjudge guilty of a contempt of

court and impose a fine of \$100 upon and commit to prison for a period of ten days E. T. Davis, an attorney and counselor at law, for an alleged contempt of the circuit court of the United States.

Wherefore the said Charles Swayne, judge as aforesaid, misbehaved himself in his office of judge, and was and is guilty of an abuse of judicial power and of a high misdemeanor in office.

Article 9 is as follows:

ART. 9. That the said Charles Swayne, having been appointed, confirmed, and duly commissioned as judge of the district court of the United States in and for the northern district of Florida, entered upon the duties of said office, and while in the exercise of his office as judge aforesaid, to wit, while performing the duties of a judge of a circuit court of the United States, heretofore, to wit, on the 12th day of November, A. D. 1901, at the city of Pensacola, in the county of Escambia, in the State of Florida, did knowingly and unlawfully adjudge guilty of a contempt of court and impose a fine of \$100 upon and commit to prison for a period of ten days E. T. Davis, an attorney and counselor at law, for an alleged contempt of the circuit court of the United States.

Wherefore the said Charles Swayne, judge as aforesaid, misbehaved himself in his office as judge, and was and is guilty of an abuse of judicial power and of a high misdemeanor in office.

The same specifications are made in the case of Belden.

Article 9 is in the same language as article 8, except that instead of using the words "did maliciously and unlawfully adjudge guilty of a contempt of court," the words "did knowingly and unlawfully adjudge him guilty of a contempt of court," are employed.

The leading exposition of this statute, which is embraced in section 725 of the Revised Statutes, is the case of *Ex parte Robinson*. (19 Wallace.) There the statute is analyzed and construed. It is there said:

The power to punish for contempts is inherent in all courts; its existence is essential to the preservation of order in judicial proceedings, and to the enforcements of the judgments, orders, and writs of the courts, and consequently to the due administration of justice. The moment the courts of the United States were called into existence and invested with jurisdiction over any subject they became possessed of this power. But the power has been limited and defined by the act of Congress of March 2, 1831.

The act in terms applies to all courts; whether it can be held to limit the authority of the Supreme Court, which derives its existence and powers from the Constitution, may perhaps be a matter of doubt; but that it applies to the circuit and district courts there can be no question. These courts were created by act of Congress. Their powers and duties depend upon the act calling them into existence or subsequent acts extending or limiting their jurisdiction.

The act of 1831 is, therefore, to them the law specifying the cases in which summary punishment for contempts may be inflicted. It limits the power of these courts in this respect to three classes of cases: First, where there has been misbehavior of a person in the presence of the courts, or so near thereto as to obstruct the administration of justice; second, where there has been misbehavior of any officer of the courts in his official transactions; and, third, where there has been resistance or disobedience by any officer, party, juror, witness, or other person to any lawful writ, process, order, rule, decree, or command of the courts.

As thus seen, the power of these courts in the punishment of contempts can only be exercised to insure order and decorum in their presence, to secure faithfulness on the part of their officers in their official transactions, and to force obedience to their lawful orders, judgments, and processes.

Now, before we further consider whether Judge Swayne abused or exceeded his authority, let us ascertain what charge was made against these lawyers. The motion made by Blount and spread on the docket of the court by the direction of Judge Swayne charges that Simeon Belden, Louis Paquet, and E. T. Davis—

as attorneys of the circuit court of Escambia County, Fla., a summons in ejectment, wherein Florida McGuire is plaintiff and the Hon. Charles Swayne is defendant, to be issued from said court and served upon the judge of this court, to recover the possession of block 91 in the Cheveaux tract, in the city of Pensacola, Fla., a tract of

land involved in a controversy in ejectment then depending in this court, in a case wherein the said Florida McGuire was plaintiff and the Pensacola City Company et al. were defendants, upon the grounds:

"1. That the said suit in ejectment against the judge of this court was instituted after a petition to this judge to recuse himself in the said case of *Mrs. Florida McGuire v. Pensacola City Company et al.* had been submitted to the court on November 5, 1901, and denied, and after the said judge had stated in open court and in the presence of the said counsel, Simeon Belden and Louis Paquet, that an allegation of the said petition that he or some member of his family were interested in or owned property in said tract was untrue, and had stated that he had refused to permit a member of his family to buy land in said tract, because the said suit of Florida McGuire involving the title to the said tract was in litigation before him, the said judge.

"2. That after the said declaration of the said judge the said counsel were aware that neither the said judge nor any member of his family were the owners of or interested in any part of the said tract and had no reason whatever to believe that he or they were so interested, and knew, or could easily have known, that the said block was not in the possession or control of anyone, but was entirely unoccupied.

"3. That the said suit against the said judge was instituted on Saturday night, the 9th instant, after 6 o'clock, and after the court had overruled the motion of the said attorneys to postpone the trial of the case of *Florida McGuire v. Pensacola City Company et al.* for a week or more, and after the said judge had announced to the said counsel that he would call the case for trial on Monday, November 11, 1901, and would then try the case, unless counsel for plaintiff made a showing why he should not so try, and the said counsel had announced that they would make such showing.

"4. That the said E. T. Davis was, before the instituting of the said suit against the said judge, cognizant of all the facts herein set forth.

Neither this charge nor the answer filed thereto was sworn to. Now, if you will strike out the unnecessary words, there is nothing contained in the first specification of the charge except the allegation that these attorneys after 6 o'clock on Saturday evening entered suit against this judge in a State court. The next is, that the judge had no interest in the property for which they sued him, and therefore there was no foundation for the suit; and again, that the judge had previously declared to them that he had no interest. In other words, the charge was that these attorneys had sued this judge after he had stated in open court that he was not subject to be sued. That is the substance of the rule brought against them.

There is no statement in the rule that the bringing of a suit was conduct constituting misbehavior in the presence of the court. There is no allegation that it was misbehavior so near the court as to interfere with the proper administration of justice. There is no allegation in the rule anywhere that it did obstruct or interfere with the administration of justice in Judge Swayne's court. There is no charge in this rule that the bringing of this suit by these attorneys was a misbehavior on their part in their official capacity. There is not an allegation which brings the rule within the act of 1831.

The attorneys filed the following answer:

Before the Hon. Charles Swayne, judge circuit court United States, northern district of Florida. In re matter of contempt proceedings against Simeon Belden, Louis Paquet, and E. T. Davis.

And now comes Simeon Belden and E. T. Davis, and for reasons why they should not be punished by contempt, sheweth:

First. That the grounds upon which the said contempt is based, to wit: Summons in ejectment issued from the circuit court of Escambia County, Fla., wherein Florida McGuire was plaintiff and the Hon. Charles Swayne was defendant, that said proceedings is in the jurisdiction of the circuit court of Escambia County, Fla., and that this court is without jurisdiction thereof.

Second. That the petition to recuse referred to in said motion they had nothing to do with before this court, nor were they present on the 5th day of November,

when submitted, as stated in said motion, nor present when any statement made by the judge concerning his connection with any of the property, except the statement made by said judge on November 11, after court convened and after the motion to discontinue the case of *Florida McGuire v. Pensacola City Company et al.* was made.

Third. To the second paragraph showeth: As above stated, they heard no declaration made by the judge, referred to in said paragraph, and as for reasons to believe that he, Judge Swayne, or some member of his family was interested in block 91, Rivas tract of land named in said summons, we simply refer to the declaration made by Hon. Charles Swayne on November 11, 1901, when said motion was made by the Hon. W. A. Blount, and that after hearing said declaration, believe that there is in existence a deed to Mrs. Charles Swayne, uncanceled, and that they have no knowledge of its repudiation, and as the negotiation for the property named in said deed was one made by Mrs. Charles Swayne in her individual right, that no act of the said Hon. Charles Swayne would repudiate or render null and void any transaction made by Mrs. Charles Swayne with her own money or property.

Fourth. That E. T. Davis for himself showeth: That this court had no jurisdiction over him in said matter of *Florida McGuire v. Pensacola City Company et al.* until he requested the court to mark his name as attorney for plaintiff on the morning of November 11, when he presented the motion to discontinue the aforesaid suit.

SIMEON BELDEN.
E. T. DAVIS.

The answer of these attorneys was not sworn to. Neither was the charge made against them. Here is a case which is criminal in its character, and an unsworn charge is met by an unsworn denial in the nature of a demurrer. The issue was formed. The kind of contempt here charged was in its nature a criminal prosecution. It was had in the name of the United States against the parties named. It should have been conducted by the United States attorney, who was then in court, and who alone was authorized to prosecute criminal cases in behalf of the United States. The judge instructed the lawyer interested in the suit adverse to Belden—Davis was not an attorney in the case—to prepare the rule.

Some criticism is made of the answer because it was not sworn to, although responsive to an unsworn statement. That was not necessary, and that objection was not raised at the trial, but the judge proceeded to hear testimony, and in great haste, without having read the statute or law under which he was acting—and proceeded with such gross recklessness that it amounted to malice—to adjudge these men guilty of a substantial contempt of his court—that is the language employed—and sentenced them to disbarment for two years, to pay a fine of \$100, and to imprisonment for ten days. Mr. Blount suggested to the judge that he could not disbar the attorneys in that proceedings. He then modified the sentence in accordance with that suggestion, and they were immediately put in jail.

The judge tried the men with undue haste. He instructed the lawyer who was interested in the suit adverse to them to prepare the rule.

The object, perhaps, of that rule was to prevent McGuire and the others from having this case litigated in the Federal court. Blount and others tell you that it had been litigated in the State court repeatedly. If the defendant parties at interest could control the Federal judge, it could never be litigated in the Federal court with any hope of success. That is where they wanted to litigate it. It had been litigated in the State court.

Now, what is the result? Paquet was driven out of the suit. A rule was taken against him. Summary judgment was about to be visited upon him, and after months of avoiding that judgment he

apologized to the court. He abandoned the litigation, and in the new suit Belden and Davis took it up.

Mr. Blount was irritated that this first suit should be dismissed, and I think it is a pertinent fact in the case that Davis never figured at all as a lawyer, according to the testimony, which is undisputed, until, by mere request of Paquet and as an accommodation, he took the order of dismissal.

It is passing strange if Davis had been of counsel in this case all the week and had been consulting and advising with these people that his name should have appeared to no pleading, that he should have taken no part in the case, and that Keyser and other plaintiffs who hired the attorneys say he was not in the case. Davis says he was not in the case, and that he merely got into it on Monday morning as an accommodation to Paquet to have the case dismissed.

Then, and not until then, did Davis have anything to do with the case of Florida McGuire.

How, then, was the judge authorized or warranted in holding Davis guilty of obstructing the due administration of justice? How could he charge him with any offense? I call the attention of the Senate to the fact that Judge Swayne made a sort of an omnibus judgment of conviction against these men. He did not specify what they had committed. If a spectator had dropped in here during this trial, he might have inferred from this case that Judge Swayne punished them for the newspaper publication; but that was not the charge. They were not convicted upon that. They were convicted for bringing a suit against Swayne in the State court.

Why did they bring that suit? They tell you they had been informed he held an interest in land in the McGuire case. They tell you that Belden and Paquet wrote to him to recuse himself; that he paid no attention to that. Davis never heard his disclaimer in the court room. Belden never received any reply to his letter to recuse himself, and when the alleged disclaimer was made was at one time away in New Orleans and at the other time sick at his hotel in Pensacola. Neither Belden nor Davis knew anything about the newspaper publication. They had nothing to do with it. The newspaper men tell you, and the handwriting shows it, that Paquet wrote it and that Pryor carried it from Paquet to the printer.

I now refer more fully to the facts in these contempt cases. The facts in the case of Belden and Davis for an alleged contempt are different in some minor particulars, as the evidence itself will reveal. In February, 1901, Messrs. Paquet and Belden, lawyers, residing at New Orleans, brought ejectment in Judge Swayne's court on behalf of Florida McGuire and others, plaintiffs, against the Pensacola City Company and others, including Messrs. Blount and Fisher, lawyers, for a tract of land sometimes called the "Gabriel Rivas" tract and sometimes called the "Cheveaux" tract.

At the spring term of the court, 1901, the case was not ready for trial. Now, Belden says that during the summer he heard that Judge Swayne had purchased lot 91 of the Rivas or Cheveaux tract, which was in litigation before him as judge of the circuit court.

Belden and Paquet addressed a letter to Judge Swayne requesting him to recuse himself, because he was a party at interest, and to notify Judge Pardee, so that he could assign a disinterested judge at the November term. Judge Swayne made no reply to the letter. On

November 5, or during the week, at the fall term of the court, Judge Swayne announced that a relative of his had purchased the land, and on the following day he said from the bench that the relative he referred to yesterday or the day before was his wife, and that she had paid for it from funds from the estate of her father. Further, in substance, that the bargain for the land had not been consummated for the reason that Edgar had offered a quitclaim deed and not a warranty deed. He never at any stage of the proceedings intimated or insinuated that he declined to recuse himself upon the ground that he had not negotiated for or that he did not know that block 91 was involved in litigation in his court.

The testimony shows that Watson & Co., Edgar's agents, with whom Judge Swayne negotiated the purchase of lot 91 and another lot, wrote to him at Guyencourt, July 19, 1901, that Edgar refused to give a warranty deed to this block, but gave a quitclaim deed, and that they had recently made an abstract of title to this lot, and that they would just as soon have one deed as the other. On the 21st Judge Swayne replied:

You may omit block 91 and send papers for the others along, and oblige.

Afterwards the agents wrote him:

In reply to yours of the 20th instant, we herewith inclose you new mortgage and note for you and Mrs. Swayne to sign, leaving the amount blank in both mortgage and note.

Neither Belden nor Davis knew of this correspondence between Watson & Co. and Swayne.

Before the November term of Judge Swayne's court there was a suit in the State court against Edgar for commission on the sale of this block 91 to Judge Swayne. In July, 1901, Edgar's agent had taken Judge Swayne over the tract of land and agreed upon the terms of sale. At this November term, 1901, the criminal business of the court was concluded about 5 o'clock on Saturday afternoon. Judge Swayne then took up the case of Florida McGuire and declined to recuse himself, and stated that the case would be heard on the following Monday, unless legal grounds for continuance could be shown.

Paquet, for the plaintiff, asked that the case be set for trial on the following Thursday, claiming that it was too late to summon witnesses that night, and that they could not be summoned on Sunday, and therefore the case could not be ready for trial on Monday. Judge Swayne ruled that the case would go on on Monday. Shortly after this the court adjourned for the day. Neither Belden nor Davis was present in the court at the time Judge Swayne made any of these statements. Belden was sick and was at his hotel, and Davis says he was not there. Davis was not an attorney or counsel in the case. His name had not been attached to any pleadings, his name was not on the appearance docket of the court, he was not an attorney of record, and he says he was not an attorney in the case in any wise.

Davis states that on Sunday morning after that Paquet telephoned to him that he had a telegram calling him home on account of illness in his family, and remarked upon the fact that Belden was too feeble and ill to go to the court-house the next day, Monday, and requested Davis to take an order of dismissal for him. This is, in substance, the conversation, and Davis says he told Paquet he would go to the court room next morning, Monday, on account of this request of Paquet,

not because he had been an attorney in the case, and take the order of dismissal, and that, accordingly, on Monday, the day the court met, he arose in his place and got an order from Judge Swayne dismissing the case. Now, then, going back to Saturday night, Paquet drew up the papers in this action of ejectment against Judge Swayne in the State court, and had the papers all ready before Davis went to Pryor's store, where they were drawn.

The contention was, on the part of Davis and Belden, that they had the right to sue Charles Swayne for lot 91 upon the theory that he had contracted for the land with Edgar, who claimed to own it. Neither Belden nor Davis had been in court and heard Swayne's disclaimer. They knew that a suit had been brought against Edgar for commissions on account of selling the land to Swayne. Belden had heard that Judge Swayne had bought lot 91. He was wholly ignorant of Judge Swayne's disclaimer, and so was Davis. If there was any counsel for plaintiffs in the McGuire case who knew of Judge Swayne's disclaimer it was Paquet.

Belden says that upon the theory that Judge Swayne had contracted for the land with Edgar and claimed to own it—Edgar had admitted that he was in possession and the contract was existing between them—that the title of the alleged owner could be tried in the State court, Swayne standing in the shoes of Edgar. That is in substance what Belden says. At the time on Saturday night when this suit against Swayne was brought it was agreed that the case of Florida McGuire against the Pensacola City Company, pending in Swayne's court, should be dismissed on Monday morning.

Pursuant to such agreement, Monday morning, at the opening of the court, Davis for the first time appeared in the case and asked for and obtained from Judge Swayne an order dismissing the suit. I have stated about the facts leading up to his appearance in the case on Monday morning. The reason that Davis made the motion was, as I have said, because Paquet was called home on Sunday and had requested him, over the telephone, to do this.

After the order of dismissal was made—mark you, after dismissal, and not before—W. A. Blount, one of the defendants to the suit which had been dismissed, and who was an attorney in the case—the McGuire case—arose and suggested that Paquet, Belden, and Davis had been guilty of a contempt of the court by bringing the suit in the county court of Escambia County against Charles Swayne. Paquet was the man who drew the papers in the suit against Swayne and was the leading counsel in the McGuire case.

Previous to this action on the part of Blount he and Judge Swayne had a conference before the court met on Monday. Swayne called Blount up on Sunday over the telephone and asked him if he had seen a statement of an action against him in the State court published in the morning paper, and called Blount's attention to it, and they discussed it. Now, as to what conclusion was arrived at can be, perhaps, inferred from the testimony. All that they said we do not know; what they may have agreed upon or not have agreed upon we do not know.

In the unsworn statement prepared and presented to him by Blount, Judge Swayne ordered a ruling to show cause to be served on Paquet, Belden, and Davis. Paquet had gone home to New Orleans on Sunday. Davis and Belden appeared and submitted an answer purging

themselves of contempt and averring their right to bring the suit against Charles Swayne.

In sentencing Belden and Davis Judge Swayne used very harsh language.

In passing judgment upon Judge Swayne in the matter of the punishment of Belden and Davis it is our duty to consider the law under which it is asserted he acted and the facts antecedent to and existing at the time of his pronouncement. It is also our duty to consider his manner and language used at the time he sentenced the alleged offenders. By this we can better judge of the reasons, the motives of Judge Swayne, and whether his conduct was a misbehavior in office. If he convicted and sentenced these men merely because of some personal grievance, real or imaginary, or because of some pique or feeling of spite, then he was guilty of seriously wrong conduct. He did use harsh language, and this tends to show his reason and motive for finding them guilty.

I haven't the time to set out the language of the testimony. I am sure that Senators will remember it, or, if necessary, read the printed record.

It is an anomaly under our free institutions that there is one sort, contempt, of a case in one tribunal, the judicial, and only one sort of a case and in only one sort of a tribunal where there is no power to review on the merits the conduct of the man making the decision. That is in a direct and what is called a "criminal contempt" proceeding before a United States judge, where jurisdiction is conceded. The courts will not go into the merits of it. If they find that the court below had jurisdiction according to the facts and the subject-matter involved, and did not exceed his jurisdiction, they will not disturb the findings on the facts.

The poor miscreant who suffers by the unjust judgment of a malevolent or vicious judge can never have the merits of his case looked into. The answer is that it is a contempt proceeding, *sui generis*, and the appellate court will not inquire into it. They say simply that the judge had jurisdiction, acted within it, and that he found the facts against the prisoner, and the facts, if true, as the court below found them, which is assumed, show a contempt, and we will not review the case further.

Let me quote Rapalje on Contempts (p. 198):

Every superior court of record being at common law the sole judge of contempts against its authority and dignity, it naturally results that the judgment of every such court in cases of contempt is at common law final and conclusive and not reviewable by any other tribunal (which in other cases would lawfully exercise appellate jurisdiction), either on writ of error or appeal, unless specially authorized by statute. Nor can such decisions be reviewed upon certiorari, except in a few States where, upon this writ, the question of jurisdiction may be looked into; which question, however, is most frequently and more properly raised by means of the writ of habeas corpus.

In *Hunter v. State* there is a dictum to the effect that where one is injured by such judgment his modes of redress are (1) by habeas corpus in which a void commitment for contempt will be disregarded and the party discharged from custody; (2) by impeachment of the judges wrongfully exercising the power; (3) perhaps by civil suit against those inflicting the wrong.

In California it has been held that an appeal will lie from an order putting a party in contempt. But as a general rule an interlocutory order in these proceedings is not appealable, such an order being merely intended to bring the party before the court. In Connecticut an adjudication of contempt by a court of competent jurisdiction, where the proceeding is according to the common-law practice, is final, and

can not be reviewed by a court of error. But when the question of contempt is tried upon an issue of law tendered by the party moving in the proceeding and decided upon such an issue the decision must be regarded as a judgment upon which a writ of error may be brought.

In Maine a review may be had upon exceptions. In Michigan an appeal will lie from an order punishing a party for a contempt for violating an injunction; for such an order is final. In Minnesota it is held that fraud of the defendant in disposing of a trust fund can not be reached and punished by proceedings for contempt in not obeying the order to pay it over to the receiver. Such proceedings can only extend to punishing the defendant for contumaciously refusing to obey the order. Therefore an appeal lies from an order committing the defendant for such contempt.

In Nebraska a judgment for contempt may be reviewed on error in the supreme court in the same manner as in criminal cases. In New York and several other States final orders punishing a party in remedial proceedings for contempt, e. g., orders imposing a fine in the nature of an indemnity to a party suffering injury by reason of the alleged contempt, are appealable. And in several States final orders or judgments in proceedings for criminal contempts are also appealable. In New York an order of the general term of the supreme court reversing an order of the special term, which adjudged a person guilty of criminal contempt of court in obstructing the execution of a warrant for arrest on a charge of crime, is not reviewable by the court of appeals. Otherwise, of an order adjudging a person guilty of criminal contempt in violating an order granted in a civil action, as it is a civil special proceeding within Code of Civil Procedure, sections 1356, 1357. Where proceedings have been commenced after September 1, 1880, to punish for contempt in not complying with a surrogate's decree made before September 1, 1880, requiring the payment of a sum of money, such proceedings, not being a continuance of the original proceedings, are subject to review on appeal.

In North Carolina where a judge of the superior court orders the costs in a case to be taxed against the counsel as a punishment for contempt for negligence occurring in another court at a previous time an appeal lies. And where, at the instance of a party litigant, judgment of imprisonment is rendered against the adverse party for a contempt in willfully disobeying an order of court the party aggrieved is entitled to an appeal. In Tennessee the supreme court is declared to have jurisdiction to revise the action of the chancery court in cases of contempt for violation of orders and process of the latter tribunal. In Virginia it is held that a judgment of a court imposing a fine upon an attorney for aiding his client in obstructing the execution of a decree of such court is appealable. But it is also held in that State that a contempt of court is in the nature of a criminal offense, and the proceeding for its punishment is in the nature of a criminal proceeding. The judgment in such a proceeding can be reviewed by a superior tribunal only by writ of error, and not always in that way.

And further, note this:

The Supreme Court of the United States have decided that proceeding in the court below for contempt of court is not reviewable on appeal or writ of error. (*Hayes v. Fischer*, 12 Otto, U. S., 121; *ex parte Kearney*, 7 Wheat., U. S., 38; *New Orleans v. Steamship Co.*, 20 Wall., U. S., 387.)

What is the remedy? It is impeachment where the judge knowingly and unlawfully adjudges a person guilty of a contempt of court and in such wrongful case imposes fine and imprisonment. The object is to remove the judge who would be guilty of such conduct, so that he may not offend again.

Now, on the habeas corpus proceedings by Belden and by Davis the sentence imposed by Judge Swayne was modified to the extent that they were allowed to take punishment in the alternative, the statute being in the alternative. It is strange that Judge Swayne and Mr. Blount should have been so hasty in taking away the personal liberty of these men that they seem not to have stopped to read the statute of 1831. They seem not to have stopped to consider what the Supreme Court has uniformly held from the Robinson case down. They seem not to have proceeded orderly, properly, legally, understandingly; but they seem to have proceeded harshly, hastily, and vindictively.

Blount says that the case had been tried several times before, and I take it that he had become irritated over it, and Judge Swayne seems to have angered. A sentence was pronounced which was not authorized by law—two years' disbarment. Blount, apparently without having scrutinized the statute, suggested that the disbarment was without authority in such proceedings. If he had examined the statute, or if the judge had done so, the lack of power to inflict the double punishment—fine and imprisonment—would have been manifest. The judge seemed to have been ignorantly or knowingly willing to trample the law and the rights of these defendants under foot.

A judge not only ought to be the personification of integrity, of honor, of uprightness, but he ought to be an example of calmness, of patience; a man exhibiting a love of justice. He should be such a man, when he comes to try the rights of his fellow-man, as to be without passion, without emotion, without irritation. He ought to try the accused as if it was the law that had been offended, not he himself, not a mere personal grievance to be considered, but an offense against the majesty of the law.

How can it be said the conduct of Belden or Davis made either guilty of any wrongdoing in their official capacity in Judge Swayne's court? Judge Swayne said in his statement from the bench that they had a right to sue him. Of course they had a right to sue him, but he objected to the manner of suing him. If they had the right to bring that suit, how could they commit a wrong in bringing it at the nighttime or at the noonday? If they had the right to institute that suit, how does the fact that they brought it at 8 o'clock at night—and the testimony shows that Paquet prepared all the papers—alter the case? Suppose they had the right to bring the suit, as Judge Swayne said they had, and that they had waited until Monday, would it have been wrong? Or if they had brought it in the noonday of Saturday, would it have been wrong?

The fact is that Judge Swayne's bosom was filled with unjudicial feelings and wrath on Monday morning on account of that publication, with which he had nothing to do.

What did they do that was a contempt of court? It did not consist in his bringing the suit. It could not have been in printing the newspaper article, because Judge Swayne did not predicate his judgment upon that. Then, tell me where and how in his official capacity they were guilty of contempt of court?

Nothing was done in the presence of the court. Nothing done so near thereto as to obstruct the administration of justice. Mr. Blount, Judge Swayne's friend, in his testimony says that the bringing of the suit would not have hindered Judge Swayne from trying the McGuire case. It could not have obstructed him. But it was some sort of indignity, more imaginary than real, that actuated the Judge.

Mr. President, the House of Representatives believes that Judge Swayne is guilty of several impeachable offenses. That under the guise and pretense of expenses for travel and attendance outside of his district he has wrongfully received several thousand dollars to which he was not entitled. That he has not resided in his district as required by positive law. That he unlawfully and malevolently punished Belden and Davis for an alleged contempt of court. That he had no right to punish O'Neal in the contempt proceedings. That he

has been guilty of such misbehavior in office as to forfeit the respect and confidence of the people. And that he has violated the conditions upon which he holds his commission, and that he should be convicted and removed from the office of judge for the northern district of Florida.

Mr. Manager POWERS. Mr. President—

Mr. BAILEY. Mr. President, I think there ought to be a quorum in the Senate during the argument.

The PRESIDING OFFICER. The Secretary will call the roll.

The Secretary called the roll, and the following Senators answered to their names:

Alger, Allison, Ankeny, Bacon, Bailey, Ball, Bard, Bate, Berry, Beveridge, Blackburn, Burnham, Burrows, Clark of Wyoming, Clay, Cockrell, Crane, Culberson, Cullom, Depew, Dick, Dietrich, Dryden, Dubois, Elkins, Fairbanks, Foraker, Foster of Louisiana, Frye, Fulton, Gallinger, Gamble, Gorman, Hale, Hansbrough, Heyburn, Kean, Kirtledge, Latimer, Long, McComas, McCreary, McCumber, McEnery, McLaurin, Mallory, Millard, Money, Morgan, Nelson, Newlands, Overman, Patterson, Penrose, Perkins, Pettus, Platt of Connecticut, Platt of New York, Quarles, Smoot, Spooner, Stewart, Stone, Taliaferro, Teller, Warren, Wetmore.

The PRESIDING OFFICER. Sixty-seven Senators have answered to their names. A quorum is present.

Mr. Manager POWERS. Mr. President, it is my purpose in the limited time allotted to me to ask the consideration of the court to the evidence in its application to the five last articles under the impeachment. These articles are known as relating or pertaining to the contempt case of Belden, Davis, and O'Neal. I noticed the other day that the learned counsel for the respondent, in opening his case, took occasion to say that the managers, he assumed, did not put any particular stress upon the article relating to the O'Neal case from the fact that the evidence and the certified records introduced in evidence were not read to the court.

You will remember, Mr. President, that when I offered that evidence I explained to the Senate that it would occupy so much time if the reading took place that I would like to have and did receive the permission of the court to introduce that evidence without first reading it. The course which I took at that time I am sure met with the approval of the Senate, and I wish to say to my distinguished friend who represents with so much ability the respondent in this case, that he never was more mistaken in his life if he believes, or for a moment has assumed, that the managers do not put strength and stress upon the twelfth article of impeachment.

Now, I desire that the membership of this great court should first understand the circumstances which existed when these contempt cases came up for consideration before the respondent in this case. First, I ask the court to observe the laws which were in force at that time in relation to summary punishment for contempt.

You will find, Mr. President, upon the seventy-third page of the record which is before you the act which was passed in 1831, entitled "An act declaratory of the law concerning contempts of court." That act has just been read by my distinguished friend who has addressed the Senate, but it requires, as it will no doubt receive from the mem-

bership of this court, a careful examination; and I desire to say that it is of the utmost importance that we should consider the circumstances under which that statute was passed.

It was passed within, I think, about sixty days after the termination of the famous Peck impeachment case, the last case which can properly be called a judicial impeachment tried before the Senate of the United States.

You will remember that in that case the distinguished attorney for the respondent, William Wirt, then in the zenith of his great professional fame, urged upon the Senate that the Federal courts had the right to punish for contempt under the common law and under that broader domain known as the law which is inherent in the court for the protection of the court. The argument of the distinguished attorney so impressed the Senate that they voted an acquittal.

The moment that acquittal was voted Mr. Buchanan, the chairman of the managers who presented the case, suggested to one of the members that that question ought to be taken up at once, and I think it was Mr. Draper who introduced the resolution for an examination into the question of the power to punish for contempt which resulted in the passage of the act to which I have referred.

I wish to call your attention to page 74 of the recor , where the language used at that time in the consideration of this new contempt law appears. The distinguished member of the House said:

I do wish to know upon what tenure the people of this country hold their liberties. * * * I am not for holding my liberty for one moment at the discretion of any individual. It may be said, sir, in opposition of the resolution, that there will be difficulty in defining contempts of court. Though this may be true, we shall find no difficulty in defining what are not contempts of court.

That was the feeling on the part of Congress after that decision; and I think, Mr. President, it is fair to say that Congress reached the conclusion at that time that the Federal courts of this country were acting under an authority far too unlimited in the matter of the punishment of contempt.

That law to which I have referred was passed in 1831. It came up for interpretation for the first time in 1835, in what is known as the Poulson case, which was decided in the eastern district of Pennsylvania, the decision being rendered by Circuit Justice Baldwin. I feel very confident that if the members of this court examine that decision, they will be impressed with the ability and the careful consideration which that justice gave to the law. There is no question that the judges of the Federal courts felt, and possibly had a right to feel, that their powers in relation to contempt had been altogether too much abridged.

Permit me, Mr. President, to call your attention to the language of Justice Baldwin in the case to which I have referred. That is a case which is reported in 19 Federal Cases, and the part from which I read is on page 1207:

It would ill become any court of the United States to make a struggle to retain any summary power the exercise of which is manifestly contrary to the declared will of the legislative power. It is not like a case where the right of property or personal liberty is intended to be affected by a law, which the court would construe very strictly, to save a right granted or secured by any former law. Neither is it proper to arraign the wisdom or justice of a law to which a court is bound to submit, nor to make an effort to move in relation to a matter when there is an insuperable bar to any efficient action.

Again, the court says:

This provision is in further confirmation of the view taken of the first section.

Referring to the second section of the act of 1831:

It is a clear indication of the meaning of the law that the misbehavior, which may still be punished in a summary manner, does not refer to those acts which subject a party to an indictment.

Let me read that once more:

It is a clear indication of the meaning of the law that the misbehavior, which may still be punished in a summary manner, does not refer to those acts which subject a party to an indictment. To construe it otherwise would be to authorize accumulative punishment for the same offense. Taking the two sections in connection, the law admits of only one construction. The first alludes to that kind of misbehavior—

Meaning the first section—

which is calculated to disturb the order of the court, such as noise, tumultuous or disorderly behavior, either in or so near to it as to prevent its proceeding in the orderly dispatch of its business; not to any attempt to influence, intimidate, or impede a juror, witness, or officer in the discharge of his duty in any other manner whatever.

Again, on the same page, after a discussion of the statute, the court says:

The law—

Meaning this act—

has tied their hands.

Meaning the hands of the court.

The judges must be passive. It is not for them to be the first to set the example of disobedience to the law, or attempt to evade plain enactments; most especially not by the exercise of a forbidden jurisdiction.

That statute came up again for interpretation in the case known as *Ex parte Robinson*, 19 Wallace, and Justice Field in that case laid down substantially the same interpretation that had been laid down by Justice Baldwin many years ago. He goes on to say that the limit of the power of the court is to three classes of cases under that statute, and this, you will remember, Mr. President, was a decision made by the United States Supreme Court as late as 1873. Justice Field goes on to say:

First, where there has been misbehavior of a person in the presence of the courts, or so near thereto as to obstruct the administration of justice; second, where there has been misbehavior of any officer of the courts in his official transactions, and third, where there has been disobedience or resistance by any officer, party, juror, witness, or other person to any lawful writ, process, order, rule, decree, or command of the courts. As thus seen, the power of these courts in the punishment of contempts can only be exercised to insure order and decorum in their presence, to secure faithfulness on the part of their officers in their official transactions, and to enforce obedience to their lawful orders, judgments, and processes.

I have cited this statute and I have gone somewhat carefully into these two decisions for the purpose of giving to this tribunal an opportunity to see the circumstances as they existed when O'Neal, referred to in the twelfth article, was brought before Judge Swayne's court.

You will remember that Mr. Blount the other day, in reply to questions which I put to him, said that he brought to the attention of this respondent the statute to which I have referred; that he read it to him; that he brought to his attention the Poulson case, which was an inter-

pretation of that statute in 1835, and that he then brought to his attention the opinion as rendered by Justice Field in *ex parte Robinson* in 1873, and read them to Judge Swayne, and then gave him an opportunity to examine them.

Having before us the law as it had been presented to this respondent, I now come to an examination of the evidence relating to the facts. I am going to take in the first place the last article, which is known as the O'Neal contempt case. A large amount of evidence has been introduced in support of that article. But the facts which are material to the issue are not in dispute, nor is the law ambiguous or subject to discussion.

In 1902—that is, three years ago—there lived in the city of Pensacola two men, one by the name of Greenhut and the other by the name of O'Neal. Both were directors of the American National Bank, and O'Neal was its president, and Greenhut was a member of what was known as the “finance committee” on the part of the directors.

Some time prior to the altercation, to which I shall refer later on, a man by the name of Moreno, living in Pensacola, and a friend of Greenhut's, had come to the American Bank for the purpose of obtaining a loan of \$13,000. It was a request that an acceptance which had upon its back the indorsement of Moreno should be discounted by the bank, and he offered as additional collateral to it a mortgage upon a piece of real estate standing in the name of his wife.

The finance committee, of which Greenhut was a member, examined the security and pronounced it sufficient. Mrs. Moreno executed a mortgage as security for the payment of the acceptance, gave her note, I think, in connection with it, and the acceptance was discounted. Later on Greenhut brought to the bank Moreno with an acceptance of \$1,500 bearing Greenhut's indorsement, and the bank discounted that.

Some time in the summer of 1902, I think in September, Moreno became embarrassed and filed his petition in bankruptcy in the district court for the northern district of Florida, was adjudicated a bankrupt, and Greenhut, his friend, was elected and appointed as a trustee of the bankrupt's estate.

Some time prior to this, the acceptance of \$1,500 having become due and demand having been made upon the indorser, Greenhut, to pay it, and he having failed to pay it, the bank, after a conversation, as it appears from the evidence, with Greenhut, brought a suit against him, and that suit at the time to which I shall now refer was pending in the State courts of Florida.

On the 18th day of October of the same year Greenhut, acting, as he claims, upon advice of counsel, brought a bill in equity in the State circuit court of Escambia County in Florida to set aside this mortgage of \$13,000, and to have the property standing in the name of his wife adjudged to be the property of the husband and turned over to the bankrupt estate. That suit was brought against the American National Bank and others.

The suit, you will understand, was brought by Greenhut as trustee, and although he was present and knew that the transaction was a bona fide transaction and had been present, as it appears from the evidence, when the money was paid over, and knew that the bank had given out its money and paid it in good faith and later on had sold or transferred this collateral to some one else, Greenhut, nevertheless, under the advice of counsel, brought this equity proceeding. The advice of

counsel is a most important feature in this world, and Greenhut said he did it under the advice of counsel.

That proceeding was brought on the 18th day of October, and papers were served upon the officers of that bank. Greenhut was not present when these papers were served.

On Monday, two days later—that is, October 20—while O'Neal, the president of the bank, was on his way from his house to his bank by the usual route which he traveled, he passed the store of Greenhut, this trustee in bankruptcy. Greenhut was standing on the street and talking with a man by the name of Lischkonff, and as O'Neal came along he said "Good morning" to both Greenhut and Lischkonff, whom he knew, and said to Greenhut, "When you are at leisure I should like to have a word with you." Lischkonff turned about to pass away and Greenhut said, "Well, I am at leisure now, step inside the store," and so they both went inside the store.

You will find upon a reading of the testimony of the two men—because these two parties were the only parties who had any knowledge of what took place inside, there was no eye witness to it—that when they got inside O'Neal said to Greenhut, "I see that you have brought a suit against the bank, and I should like to know what reason you have for bringing a suit of that kind. You were present. You know that that transaction was all right." "Well," said Greenhut, "I brought that under the advice of my counsel." "Well," said O'Neal, "I should have thought that you would have spoken to us about it before you brought the suit. You know when we sued you on that acceptance we talked it over with you and gave you a chance to pay it." He said, "Whatever I have done, I have done under advice of my counsel, and you go and see him." "Well," says O'Neal, "you are no gentleman." Turning to O'Neal, Greenhut says, "You are no gentleman," and Greenhut says, "I am as much of a gentleman as you are." Then O'Neal says, "If you will step outside, we will settle that question."

Now, there was no controversy over it. That is the testimony that was before the court when that case was decided. Both parties started toward the door to settle that most momentous and important question as to which was the more of a gentleman.

Now, I assume that that issue is an issue that has led to a great many personal altercations and affrays in years gone by, and that it is an issue that will lead to a great many in the future. It was that important question which led those two men to start for the door to settle it. In other words, O'Neal said: "If you will step outside we will settle it," and the invitation was accepted by Greenhut.

Now, before they got to the door they got into a fierce affray, and you will find upon that that there is a great discrepancy in the testimony. O'Neal says that while he was on his way to the door Greenhut came up behind him and dealt him a staggering blow, and that he turned around and saw Greenhut coming at him, and as he came at him again he tried to ward off the blow, and he drew a knife from his pocket, and in the controversy he stabbed, and, as I admitted the other day, seriously injured Greenhut. On the other hand, Greenhut says that while he was following him out toward the street O'Neal turned around and made a lunge at him and stabbed him before he got a chance to reach the street and to settle the controversy as to which was the more of a gentleman.

Now, that occurred on the 20th of October. It was not in the court-

house of the northern district of Florida. That court was not in session. Judge Swayne was not in his district. He was hundreds and possibly a thousand miles away from his district at the time of this altercation.

The suit which the trustee had brought was not pending in Judge Swayne's court. He had not brought it under any affirmative order, mandate, or decree of Judge Swayne's court. If you will study the evidence you will find that the issue of bringing that suit had nothing whatever to do with that controversy except so far that if the suit had not been brought possibly the gentlemen would not have had the conversation—nothing more than that. It may be that the respondent goes so far as to say that the bringing of that suit was the approximate cause of that affray, because if it had not been brought there would not have been any conversation on that point. Certainly, in order to show that that suit was the cause of the affray, it must be upon the theory that there would have been no conversation unless the suit had been brought.

Well, now, let us see what happened after that. Greenhut could not go to Judge Swayne at that time because Judge Swayne was in Guyencourt, Del., and he waited, and while he waited his wounds healed. Judge Swayne in due time returned to the district somewhere about Christmas time, or possibly in November. He came down there and opened his court, and Greenhut filed a complaint before Judge Swayne, and in that complaint he alleged that he had been assaulted because he brought that suit, and that this assault was solely—mind that—solely for the purpose of preventing him from continuing the suit.

Well, Mr. Blount—and Mr. Blount is a good lawyer, and he has the indorsement of the distinguished gentlemen who represent the respondent—Mr. Blount appeared and filed a demurrer, and it was at the time of filing the demurrer that he brought to the attention of this respondent the statutes and the decisions to which I have referred. But Judge Swayne overruled the demurrer. Then O'Neal came in and filed his answer purging himself of contempt. You will find the answer printed in the Record, and I trust that the court will observe that answer. If you can imagine an answer that more completely purges a man of contempt than that, you can imagine an answer better than any that has ever yet appeared in any case which has come to my attention.

In that answer O'Neal says not only that he did not intend to have any altercation or affray with Greenhut, but he further says that in that altercation he did what was necessary, and no more than was necessary, to protect his person against a stronger man than himself. More than that, he says that he never meant any contempt of the court, and that he never dreamed of it, and that nothing was more remote from his mind than the idea of committing a contempt upon the honorable district court of the district in which he resided.

Well, ordinarily a man can purge himself of contempt. If one of the members of this court, Mr. President, were to be summoned as a witness before the court and failed to appear in the morning at the time named in the summons, he would be in contempt of the court, and the court would have the right to issue an attachment.

But whenever he came in and said that he was detained, whether on account of the conveyance that he was using or by illness or the illness of some one in his family and made oath to it, that would be the

end—that is, the “purging,” so called—and the proceeding would be dismissed as against the party.

Now, this right to purge for contempt is as old as the common law. You will find that Blackstone discusses it, and he says that while it is a dangerous thing as applied to the conscience of the individual, nevertheless it entitles him to be released, and if he has made a false oath, then that can be reached by indictment. But the purging of contempt on the part of O’Neal, complete as it was, absolute as it was, did not have the slightest effect upon Judge Swayne, and he ordered the case to proceed to trial.

I recognize, Mr. President, that this high court of impeachment at this time in the session is greatly pressed with the work of what is known as the “public business,” but if any member of this court wants to read something interesting, something a little more interesting than ever yet has been published in the shape of fiction, let him read the trial which was conducted in the O’Neal case before Judge Swayne. That trial went on the evidence, all of which is printed. You will find it in the record.

About one of the first things that occurred in that trial was the attempt upon the part of the prosecution to prove that Greenhut had a reputation for peace and quiet. His reputation had not been attacked up to that time, and while Mr. Blount, with all the force of his great legal attainment and ability, contended that such evidence ought not to go in, and said, “We do not propose to attack the reputation of the complainant for peace and quiet,” nevertheless it went in, and they called eleven witnesses to prove that he was a man of peace and quiet.

There was not the slightest evidence that while these two men, O’Neal and Greenhut, had lived together in Pensacola under like conditions and like circumstances, O’Neal had not maintained just as good a reputation for peace and quiet as Greenhut. Nevertheless, Judge Swayne allowed evidence to be put in that sometime away back in the past, in some other country, or some other State, or some other county, where conditions were different, O’Neal was arrested for carrying a concealed weapon.

Mr. Manager PALMER. He made O’Neal testify.

Mr. Manager POWERS. He made O’Neal testify that he was convicted for carrying a concealed weapon; and, furthermore, that at some time in his life he had fired a gun across a public highway, which was in violation of some by-law or ordinance.

Now, that is the way that testimony went in, and, mind you, that testimony went in against the protest of Mr. Blount, who represented the respondent.

Well, now, when that case was completed and all the evidence was in, Judge Swayne delivered a somewhat lengthy opinion; and if you will read that opinion, which is published in the record, you will find that the only question before the court and the only question which he attempted to settle was whether the stabbing of Greenhut by O’Neal was justifiable. I am going, with the permission of the court, to read a short extract from that opinion for two purposes; first, to show what was in the respondent’s mind at the time he sent O’Neal to jail for sixty days for having taken part in a contest as to whether he was more of a gentleman than his friend Greenhut, but also to show the manner in which justice was administered in the court at Pensacola.

Mr. Manager OLMSTED. Will you not give the page in the record?

Mr. Manager POWERS. I can not give the page at this time. I am not sure where it is in the testimony that was introduced. Possibly my friend will look it up and can state it later on.

Mr. Manager OLMSTED. The opinion begins on page 229.

Mr. Manager POWERS. On page 231 of the record Judge Swayne used the following language:

It is a recognized rule of law by everybody who knows any law that in order to justify anyone with an assault with a deadly weapon they must first retreat as far as they can get when assaulted, and when they can go no farther, if their assailant has something which is likely to endanger their life or do them great bodily harm, as I remember the language, only then are they entitled to assault anyone with a knife, pistol, or any weapon for self-protection. Otherwise, if there is an opportunity to flee, they must go, and if they do not, and stand and what is commonly called "fight," and they injure their assailant, they are responsible therefor.

And he found that this man O'Neal could have gotten away; that the door was open; that he was near the street; and that he might have gotten away; but that instead of running as fast as he could and trying to keep out of the way of Greenhut, he stopped, and when he stopped and found Greenhut after him he drew his knife and committed an unjustifiable assault.

I imagine there is something in that opinion that may go a long way toward establishing a new precedent in this country on the subject of what constitutes a justifiable assault.

Well, when that case was over Judge Swayne found O'Neal guilty. I do not know what he found him guilty of. Apparently he found him guilty of an unjustifiable assault.

Mr. Manager PALMER. I want you to read the testimony that found him guilty.

Mr. SPOONER. What is the page?

Mr. Manager PALMER. On page 231. Just read that [indicating]. That is the point of the whole business.

Mr. Manager POWERS. My distinguished associate asks that I read from page 231, and, with the permission of the court, I should like to have the Secretary read the extract which is marked by the honorable manager.

The PRESIDING OFFICER. The Secretary will read.

The Secretary read as follows:

The testimony of both parties places Mr. O'Neal so that he could have leaped out of the office instantly and gotten out of Mr. Greenhut's way in case Mr. O'Neal's story is correct. He did not do so, according to his own statement, but according to his own statement says that he would not fight in the office, but if he would come into the street he would fight. But Mr. Greenhut, as I have said, contradicts Mr. O'Neal flatly, and Mr. O'Neal contradicts Mr. Greenhut flatly, and in disposing of this case the court must decide between them.

Mr. Manager OLMSTED. Now begin with the paragraph "Leaving the testimony."

The Secretary read as follows:

Leaving the testimony of the two men out of the question and looking at the reasonableness of the situation. Next, take the two testimonies. The one tells one story and the other the other. What must be done under those circumstances? No living witness testified to what he saw except the two parties. The court must dispose of the truth or falsity of those statements upon their sworn testimony and what additional light it can get, and in that connection it turns to the record and character of the two men for peace and good order and quiet.

Eight or ten or a dozen of the best citizens of Pensacola appeared and testified, or it was admitted upon the part of the respondent that they would so testify, and their

testimony was waived, that Mr. Greenhut was a gentleman of quiet, peace, and good order; in truth, at this hearing no intimation was made, no attempt was made to intimate, that Mr. Greenhut had ever had a quarrel, wordy quarrel even, with any living being. On the other hand, the record of Mr. O'Neal, as shown, was not of that character. I do not care to go over it. It is not a pleasant task, and I won't review it particularly, but simply refer to it as a fact that, taking the record of Mr. O'Neal on the one hand, showing his character and disposition and troubles that he had had in different places, and the utter absence of everything of that character as regards Mr. Greenhut on the other, the court is compelled, in the direct conflict of testimony between the two men, to say that it believes Mr. Greenhut's story of this controversy and to disbelieve the story told by Mr. O'Neal. So much for the reasons of the finding.

Mr. Manager POWERS. Now, Mr. President, we have substantially all the evidence material to this issue before us, and suppose we consider now under which one of the three classes of cases into which the Supreme Court has said the cases covered by the statute are susceptible of being divided this case falls. It certainly does not fall within the first class, where there has been misbehavior by a person in the presence of the court, or so near thereto as to obstruct the administration of justice, because the court at this time was not in session and the judge was not within the limits of his court.

It does not come within the second class, where there has been misbehavior by any officer of the court in the official transactions, because O'Neal was not an officer of any court. It does not come within the third class, where there has been disobedience or resistance by an officer, party, juror, witness, or other person to any lawful writ, process, order, rule, decree, or command of the court, because it appears that this suit which had been brought there had been brought by no affirmative mandate of that court. It had been brought under the general authority of the trustee acting, as he claims, under advice of counsel.

You may ask, and, possibly, properly ask, "How do you account for the sending of O'Neal to prison when he did not fall within the provisions of the contempt statute?" No one will question that if he did what was charged against him in the complaint he fell within the second section of the act of 1831, and that was an attempt to obstruct the course of justice. That made it an indictable case, and I think, Mr. President, you will agree with me that as an indictable case the only way that that controversy ought to have been settled was by indictment. If it was an indictable case, then the grand jury could have indicted O'Neal, and he would have had the benefit of a trial before a jury of his peers, where he would have had an opportunity to have shown whether or not he had been guilty of an unjustifiable assault; but he was not permitted to have that trial. He was fined and sentenced to imprisonment for sixty days.

How did that leave this man O'Neal? He was sentenced for sixty days for an assault upon Greenhut. The next day he could have been indicted in the State court of Florida and punished by imprisonment for another sixty days if the finding had been the same as that made by this respondent. What would have been the result of that? He would have received two punishments for one offense; and that is what Justice Baldwin says is the strongest test by which the statute of 1831 is to be interpreted. He says that no man can be punished under that statute who has committed an indictable offense. If O'Neal did what it is claimed he did—committed an unjustifiable assault—that was an indictable offense, and does not fall within the first section of the act of 1831. If, on the other hand, he had committed an indicta-

ble offense under the second section, he could be punished under that section, and one punishment for one offense would have satisfied the law.

I say, Mr. President, and I say it advisedly, that no man can examine the evidence of that case and examine the conduct of this respondent without reaching the honest conclusion that he knowingly unlawfully punished O'Neal.

There has been some evidence that O'Neal had something to do with this agitation concerning the impeachment of the respondent. He is dead and gone now, but at the same time I say that if he had anything to do in furthering this prosecution he had a right to do it.

I now take up, for only a brief consideration, the Belden and Davis case. I am aware that there is more or less conflict of testimony concerning that case. It is conceded by the defense that Belden and Davis were illegally punished. I mean by that that sentence was imposed upon them which was not authorized by law.

It is further agreed that in the original sentence, where they were disbarred, fined, and imprisoned, the disbarment was illegal, and that they could legally be made to suffer only either a fine or an imprisonment. It is also conceded by the respondent that the two attorneys who were selected to prosecute Belden and Davis for contempt of court were the defendants in the case out of which this trouble grew—defendants in the Florida McGuire ejectment suit—and that Judge Swayne selected those two men to act as friends of the court to prosecute these two attorneys.

I think that every member of this court, Mr. President, must be satisfied that those attorneys acted wisely when they decided to dismiss that suit. Look at the circumstances. I can only take up that case briefly. We find from evidence that it is not disputed that this case had been pending for some time in Judge Swayne's court. It was an important suit; it involved a million dollars; and it was a question whether the title to the property belonged to the defendants in that suit or to the plaintiff.

While that suit was pending in Judge Swayne's court, either knowingly or not—I do not know whether he knew or not—he was examining that land with a view of buying a portion of it. The testimony of the witness, Hooten, is that he took him over the land and said: "This is the land that is in controversy." Judge Swayne said: "Well, if I buy a piece of this land that will disqualify me from trying that case."

Judge Swayne then goes up to Delaware—this conversation, when he examined the land, took place, I think, in June—and he enters into negotiations with Mr. Edgar, who was one of the defendants in that case. That is, the judge who was presiding over the court which was to try the case entered into negotiations with one of the defendants to purchase a part of the property that was in litigation; and he did purchase a part of it, as it turned out afterwards, for his wife.

The deed was made out and was sent on. Some controversy arose later as to whether he was entitled to have a warranty deed or whether he was obliged to take a quitclaim deed, and the Judge decided that he would not take the property because they did not give him a warranty deed.

When the attorneys from New Orleans learned of this, what did they do? They said: "It is reported to us that the judge who is to

preside over the trial of this important case is negotiating and has negotiated for the purchase of a portion of the land in dispute, and he ought not to try that suit." So they wrote him a letter asking him to recuse himself, and to send Judge Pardee or some one else and let him try the suit. Judge Swayne took no notice of that letter. There is no evidence that it was not a courteous letter.

It came from men of great standing at the bar, one of whom had been the first law officer of the State of Louisiana. Yet Judge Swayne paid not the slightest attention to that letter. So when the court comes in to try the criminal cases, up comes General Belden and Judge Paquet. They waited around there to find out whether Judge Swayne was going to recuse himself or not. There is evidence that on the outside he made the remark that he had not purchased any of that land or entered into any contract for the purchase of that land; that the contract he had entered into was in behalf of a relative. This was on Tuesday.

On Thursday he said that the relative to whom he referred was Mrs. Swayne, his wife. Then he said: "I did not buy the land. I am not going to take it now, and I want this case brought before me." "Well," they said, "we have been waiting around here to see if we could get the case tried by some other judge, but if you are to try it we want a little time to get ready for it." "How much time do you want?" they were asked. They said: "Until next Thursday, in order to get our witnesses ready for trial, if we have got to try it in this court." He said: "You have got to try it on Monday." "Well," they said, "we can not do that. We can not get ready for trial by that day." Mr. Blount said he was ready, and of course whenever an attorney on one side finds that the attorneys on the other side are not ready for trial he is always ready to insist on the trial proceeding.

So the Judge turned around and said: "You get ready to try this case on Monday morning." Remember that Judge Swayne's negotiations for the purchase of this property were suspended at that time until he disposed of that case, which would settle the title to that property. That made it possible for him to take it up and go forward with his negotiations and purchase the property in behalf of his wife and in behalf of his son.

I ask any member of this great court—men who have made their reputations as trial lawyers, many of them, before they came to this Chamber—whether under those circumstances they would have gone to trial? Under the statute they had the right to dismiss that suit and pay the costs and undertake to seek their remedy in some other tribunal. They decided to do that; and I say that ninety-nine lawyers out of a hundred, under those circumstances, in view of that conduct, would have decided to do so.

So on that Saturday night they met at Pryor's store and decided to dismiss that suit and pay the costs, and then they decided to do something else. I am not here to say that it was good taste to do it; I doubt if most of us would have done it under the circumstances; but I do say that General Belden takes the stand and says that he believed at that time that Swayne owned that land, and therefore he brought suit in the State court. Nobody questions but that they had the right to sue Judge Swayne in his individual capacity in any court outside of his own. They brought that suit against him in the State court; but the evidence is conclusive that they did not decide to bring that suit until

they had decided to dismiss the suit which was pending in the circuit court.

That caused an affront to Judge Swayne, and he called up that Sunday or Saturday night some one to advise him as to what he had better do with these lawyers. He called up the attorneys and defendants in that very suit out of which this controversy grew. Then they decided to wait until Monday morning, and on Monday morning they brought Davis and Belden before the court, and, according to the testimony, in one hour they were arraigned, tried, convicted, sentenced, and locked up in the common jail of Pensacola.

There was old General Belden, who was born more than three score and ten years before in the State of Louisiana, who had been connected with the public affairs of the State for more than half a century, who had been the godfather at the cradle of the political party to which he had belonged for more than half a century, had been the speaker of the house of representatives of his State, had been the attorney-general of that great Commonwealth, sick and paralyzed, and yet he is brought before this respondent, arraigned, tried, convicted, sentenced, and locked up in a felon's cell inside of sixty minutes. Is that the due administration of law under the Federal judiciary of this country? Is that what we mean when we talk about the independence of the American judiciary?

I come from a State where we are proud of that long line of eminent jurists which the Commonwealth of Massachusetts has given to that State and to the nation. The independence of the judiciary in that State rests upon the respect in which it is held by the people of that Commonwealth. And I want to say to you, Mr. President, that the respect for the judiciary of this country will always depend upon the manner in which the members of the judiciary conduct themselves.

Suppose you acquit the respondent. If you acquit the respondent, you say by that verdict that you approve of his conduct; you send him back to his district, agitated for a decade over the way in which justice has been administered; you send him back there and give him that tremendous power which he thinks he has in matters of summary punishment for contempt of his court, and how long will it be before you have the case back to you again?

I want to say to you, Mr. President, that this power to inflict summary punishment for contempt is a most dangerous power when it is lodged in the hands of a vain or a weak or a vicious judge. Did you ever hear that it was necessary for any great jurist, in order to maintain the independence and good order of his court, to take men of the highest character and send them to jail? That does not occur with great judges. It occurs with small judges; it occurs with vain men; it occurs in those cases where men possess power to which they are not entitled and which they ought not to possess.

So far as I am concerned, Mr. President, I have no feeling of animosity toward the respondent. I believe I can say that of every one of the managers who have come here charged with the duty which we are now performing. It is a great duty; it is an important duty; but it is a disagreeable duty.

We stand as the representatives here of 80,000,000 people, who ask your careful scrutiny of this case, and ask you when you have determined upon its true merits that you shall not shrink from the performance of that high duty which the Constitution of the United

States has conferred upon you and also from the confidence which a great people have reposed in you.

I trust, Mr. President, that in the consideration of this case we will forget everything except the rights which belong to the respondent and the rights which belong to the American people. With that consideration which this great high court of impeachment will give to the rights of those two classes it will define upon one side the prerogatives of courts, and upon the other side will limit and describe the liberties of the people. Having done that you will have done your duty, and we, the managers, the House of Representatives, and the American people will bow in acquiescence to whatever decision you reach.

The PRESIDING OFFICER. Who is the next to address the Senate?

Mr. HIGGINS. Mr. President, I will, on behalf of the respondent.

The PRESIDING OFFICER. Mr. Higgins, on behalf of the respondent, will now address the Senate.

Mr. HIGGINS. Mr. President, I conceive it is of no slight interest or importance to the Senate that of the four learned managers who have now taken part in the presentation of the prosecution of this case three of them have devoted as much time as they have to the question whether the offenses charged in the first seven articles constitute impeachable offenses—the alleged offense or crime of the respondent of making a false claim, or obtaining money by false pretenses; of using a car belonging to a railroad company contrary to good morals; and, third, in not obeying the statute to reside in his district.

All three have united in presenting the argument of *ab inconvenienti*—one which seldom weighs much with courts, and one which, it seems to us, after the conclusive discussion of the subject in the argument which it has been our privilege to present to the Senate on the constitutional question, is not left in the case really for discussion. That argument shows beyond peradventure that the framers of the Constitution in leaving out of the Constitution any provision for the removal of an official subject to impeachment by address did it purposely and with a view of giving stability to those who hold the offices, and especially the judges.

Mr. Dickinson—

Says Elliott in his Debates on the Constitution—

moved, as an amendment to Article XI, section 2, after the words "good behavior," the words "*Provided: That they may be removed by the Executive on the application by the Senate and House of Representatives.*"

This was in respect of the judges.

Mr. Gerry seconded the motion. Mr. Gouverneur Morris thought it a contradiction in terms to say that the judges should hold their offices during good behavior and yet be removable without a trial. Besides, it was fundamentally wrong to subject judges to so arbitrary an authority.

* * * * *

Mr. Randolph opposed the motion, as weakening too much the independence of the judges.

* * * * *

Delaware alone voted for Mr. Dickinson's motion.

Says Judge Lawrence in a paper on this subject which he filed in the Johnson impeachment case:

Impeachment was deemed sufficiently comprehensive to cover every proper case for removal.

* * * * *

The first proposition was to use the words, "to be removable on impeachment and

conviction for malpractice and neglect of duty." It was agreed that these expressions were too general. They were therefore stricken out.

* * * * *

Colonel Mason said:

Treason, as defined in the Constitution, will not reach many great and dangerous offenses. Hastings is not guilty of treason. Attempts to subvert the Constitution may not be treason as above defined.

He moved to insert after "bribery" the words "or maladministration."

Madison replied:

So vague a term will be equivalent to a tenure during the pleasure of the Senate.

Mason withdrew "maladministration" and substituted "other high crimes and misdemeanors against the state."

Mr. President, there are in the States of Pennsylvania, Delaware, South Carolina, Alabama, Arkansas, Florida, Illinois, Kentucky, Louisiana, and Texas provisions substantially the same as those contained in the constitutions of Pennsylvania and of Delaware. The constitution of the State of Pennsylvania of 1790 provides:

ARTICLE V.

SEC. 2. The judges of the supreme court and of the several courts of common pleas shall hold their offices during good behavior. But for any reasonable cause, which shall not be sufficient ground of impeachment, the governor may remove any of them on the address of two-thirds of each branch of the legislature.

The clause of the constitution of Delaware is similar. The Pennsylvania constitution as amended in 1838 provides:

SEC. 3. The governor and all other civil officers under this Commonwealth shall be liable to impeachment for any misdemeanor in office, but judgment in such cases shall not extend further than to removal from office and disqualification to hold any office of honor, trust, or profit under the Commonwealth. The party, whether convicted or acquitted, shall, nevertheless, be liable to indictment, trial, judgment, and punishment according to law. (Page 1561.)

So that there are in those constitutions the direct provision that power of removal by address is given as punishment for cases which by the very words of the constitution are said not to be the subject of impeachment.

An examination of the constitutions of the several States will show that there are not more than two or three State constitutions which do not contain the power of removal by address. That power was placed in the English constitution by a great and famous historic statute—the Act of Settlement—passed early in the reign of William and Mary, or of Anne, at the time when the present dynasty of the British throne was placed upon the authority of an act of Parliament. Then it was that the provision was placed in the statute that judges should be removable by address for causes that were not the subject of impeachment. Therefore, in the face of this state of the constitutional law and of the terms and provisions of the Constitution, where is there room for an argument that that construction shall not hold because there is no other way of getting rid of judges but by impeachment?

Now, but one word more on this, and that is in respect to the case that was cited by the learned manager, Mr. Olmsted, of an impeachment in Massachusetts. I call attention to the fact that the constitu-

tion of Massachusetts of 1780 makes provision for the impeachment of judges broader than the other States, or at least most of them.

ART. VIII. The senate shall be a court with full authority to hear and determine all impeachments made by the house of representatives against any officer or officers of the Commonwealth for misconduct and maladministration in their offices.

So in Massachusetts the judge who took illegal fees upon the ministerial side of his probate court was clearly impeachable under the provision of the Massachusetts constitution which extended to ministerial functions. I shall say no more bearing upon that very important and interesting point. I do not intend to consume the time that is allotted to counsel for respondent, or of the Senate, in going over any of the ground that it has fallen to my duty to discuss in the preceding stages of this trial. I shall have something to say in reply, however, to the learned managers and in respect of some of the testimony of their witnesses as to the contempt cases; as to Davis and Belden, not much more than a word.

Both Davis and Belden testified that in the court, after they were brought up for contempt, one and the other informed Judge Swayne that at the time they brought the suit against him they were not aware of the fact that he had disclaimed ownership in block 91, and therefore that there was no ground on which to recuse himself. That would imply that if they had known it they would not have taken the position they did in their answer, which was that they had brought the suit because he had stated that there was an uncanceled deed out to Mrs. Swayne for this property, and that he, Judge Swayne, did not have the power to revoke or cancel that deed, the negotiations being conducted with her own money and not with his. I call the attention of the Senate to the fact that the testimony of these witnesses is irreconcilable absolutely with the position taken in their answer, their defense, the case they were supporting before that court.

But I go further. You will read in the record from the circuit court of appeals, which makes up the decision of that court on the habeas corpus, the seventeen different reasons of Davis and Belden why the habeas corpus should be granted and they should be discharged and the proceedings below should be set aside.

In not one of those reasons do they set forth the claim that they had brought to the attention of the Judge that they were ignorant of his disclaimer. I challenge the learned managers, or the one who is to close this case, to show here from the testimony taken before the Judiciary Committee of the House—and they can introduce it if they please—where either Davis or Belden, when they testified there, said they had informed Judge Swayne of any such thing. It is left for them when they come here and when they need it and their case needs it to make up this statement. But when they do they are met by the testimony of Mr. Blount and Mr. Marsh, the intelligent and capable clerk of the court, both of them interested in this case, and Mr. Blount concerned, that they heard no such statement.

I, therefore, say that on the principle that a court gives the verdict on the weight of the evidence, the judgment of the Senate on that point, on the weight of this evidence, ought to be that the statements of these two witnesses here, Davis and Belden, can not be accepted in the face of their own record and the contradiction by disinterested witnesses.

Mr. President, it is on that case as it thus stood before that court

that the learned manager who has just concluded his remarks ventured to say that Davis and Belden were in every sense justified in bringing their suit against the Judge. The learned manager undertook to plant himself upon this idea that there was an outstanding negotiation. He did not undertake to argue it. I should like his colleague, who is to conclude, to undertake to argue or show this tribunal that there was any title in Judge Swayne on which he could recuse himself—any title or any possession on which an action of ejectment could be predicated—to save the proceeding from the overwhelming condemnation of being an unfounded suit.

What is the status of any lawyer who brings an unfounded suit against the humblest person but an oppressive exercise of his office and one which ought to be treated as misbehavior in the discharge of the duties of his office? I shall not undertake to repeat what I have said before of the character of this transaction, when it was leveled at the Judge without a whimper of cause and in order to affect his judicial action.

The learned manager who opened this case undertook to show that the conduct of the Judge was malicious because the sentence was outside of the law, by being fine and imprisonment instead of fine or imprisonment, and also because of the words in which Judge Swayne delivered his judgment. I refer to that phase of the case now to call the attention of the Senate to the testimony of Mr. Blount. In disputed cases, in the search after truth, in the endeavor of a disinterested and honest judge and court to arrive at the facts, there is and ever must be infinite satisfaction in realizing that you have in one witness at least a man who because of the clearness of his intellect and the unquestioned standing and character which he bears can be relied upon in his testimony, and that you can do with Mr. Blount. I am perfectly willing to leave to the Senate, Mr. President, as the evidence and ground upon which it shall conclude as to the Judge's manner in administering this punishment and in sentencing these men to jail and to fine, the statement that Mr. Blount made.

In the face of all that testimony without comment the learned managers in one breath say they are pained and without any ill feeling toward the respondent, and just before they draw conclusions ignoring the testimony, draw conclusions unjustified by the testimony and contrary to the testimony, and seek to make up the lack of evidence and testimony by the severity of their denunciation.

We all know the respect in which the judiciary of the State of Massachusetts is always held, and we know of the respect which is always accorded to it, but I think I can ask any member of the Senate whether he thinks a judge of that State would not have visited any attorney of his court with summary punishment if he had brought an unfounded suit against the judge and pointed at it in a malevolent newspaper article which went along with it; and I care not whether Davis and Belden had any part in writing it or not. As I said before, they and Paquet were all in the combination, all bound by the same undertaking, each guilty of what the other did, and this telltale publication was a give-away and a condemnation for them all, scandalous in its character, and determining the scandalous and unfounded course in bringing the suit.

Mr. President, I now come to the O'Neal case, and I shall again ask to have read the testimony of O'Neal himself as to the rencontre. It will take but a moment to have it done.

The PRESIDING OFFICER. The Secretary will read as requested.
The Secretary read as follows:

Q. Didn't you tell him on that occasion that the trouble emanated from the suit that was commenced by Mr. Greenhut, as trustee, against Scarritt Moreno, the American National Bank, and others on the preceding Saturday?—A. I do not think so. I think I told him—I told him that the trouble was caused by the bankruptcy of Moreno, Baars, or something of that kind.

Q. Mr. O'Neal, have you ever been convicted of any crime?

* * * * *
A. I was convicted once for shooting across the public road out in Covington County.

Q. At Andalusia?—A. Yes, sir.

Q. Mr. Stallings prosecuted you for that crime, did he not?—A. I do not think he did. I pleaded guilty to it.

Q. Were you indicted at that time for shooting across the public road?—A. Yes, sir.

Q. Were you not indicted at that time for shooting across the public road, from the court-house in Andalusia to Bradway's barroom, at Lewis Harrison?—A. I was not indicted for shooting Lewis Harrison.

Q. Shooting at him across the public road, at Lewis Harrison?—A. I was not indicted for shooting across the road at him.

Q. What other times have you been convicted, if any?—A. I was convicted in Covington County once for carrying concealed weapons—a pistol.

Q. When was that?—A. That was some time while Stallings was solicitor.

Q. What else?—A. I do not remember to ever having been indicted for anything else.

Q. You say you were convicted for carrying concealed weapons in Covington County?—A. I think so; yes.

Q. Where else, Mr. O'Neal, have you been convicted?—A. I do not remember having been convicted of anything else.

Q. Don't you remember having been convicted in Henry County?—A. No, sir.

Q. You were not convicted in Henry County for carrying concealed weapons?—A. I do not think I was.

Q. Didn't you plead guilty to a charge of carrying concealed weapons there about two years ago?—A. I don't think so; yes, I was.

Q. You were convicted there?—A. I plead guilty to it; yes.

Q. Well, what other times, Mr. O'Neal, have you been convicted?—A. I do not think of any others.

Q. Were you not charged in Henry County with having made a murderous assault upon one Simonton with a claw hammer?

Counsel for respondent objects to question.

Counsel for prosecution withdraws question.

Q. Mr. O'Neal, you were sued civilly for assault made by you upon one Mr. Simonton, were you not?

* * * * *
Q. Was there or was not there a judgment recovered against you in Henry County for a murderous assault made by you upon one Simonton?

Counsel for respondent objects to question as showing result of the suit and proving a judgment that is a matter of record. Objection overruled and exception noted by counsel for respondent.

A. He sued me—Mr. Simonton sued me and recovered \$50.

Q. Sued you for what?—A. For damages about a fight we had. He and I had a fight.

Q. The allegation was that you had struck him with a claw hammer, was it not?—A. Yes, sir.

Q. Do you know what became of Mr. Simonton after that?—A. Yes, sir.

Q. What?—A. He is in Pensacola now.

Q. He is?—A. Yes, sir.

Mr. Manager PALMER. I think something has been omitted from the testimony as found on page 223 which ought to be read. It is in the middle of the extract. An omission was made, and I think the part ought to be read.

The SECRETARY. It was erased.

Mr. Manager PALMER. It was not the fault of the Secretary. When Mr. O'Neal was asked whether he had been convicted of any crime,

counsel for the respondent objected, and there was a ruling, and the objection and the ruling of the court ought, in all fairness, to be read as a part of the record.

Mr. HIGGINS. The learned manager of the House of Representatives will have the time to do that.

Mr. Manager PALMER. I think I have a right to have it read now.

Mr. HIGGINS. I hope this will not be taken—

The PRESIDING OFFICER. The Presiding Officer supposes counsel for respondent have—

Mr. HIGGINS. I do not object.

The PRESIDING OFFICER. A right to determine what they will have read from the evidence.

Mr. HIGGINS. I will allow it to go in. I think it is irregular, but I will let it be read.

The Secretary read as follows:

Q. Mr. O'Neal, have you ever been convicted of any crime?

(Counsel for respondent objects to the question.)

The COURT. It has always been the practice here that any witness, including himself, can be asked questions in the criminal docket. In the prosecution of the criminal docket here—trial of criminal cases—it is a very common question, of which I can cite a dozen or more instances, whether or not the witness, does not matter what witness, any witness, has not been convicted of this or that or the other offense, not for the purpose of trying him for any other offense at all, but under the rules for the purpose of striking at his credibility. I will give you an exception.

(Counsel for respondent notes exception to ruling of the court.)

Mr. HIGGINS. I now ask the Secretary to read the direct examination by Mr. Blount.

The Secretary read as follows:

Direct examination by W. A. Blount, esq.:

Q. You are the W. C. O'Neal against whom this proceeding has been taken?—A. Yes, sir.

Q. Mr. O'Neal, will you please state to the court the circumstances attending—not leading up to at that time—but the circumstances attending the affray between you and Mr. A. Greenhut? Where had you been; [where] were you coming from that morning?—A. I was coming from home.

Q. Where did you stop on East Government street?—A. I stopped there in front of Mr. Greenhut's place of business.

Q. He spoke of your stopping in front of the bucket shop. What place was that?—A. I do not remember whether I stopped there or not. I might have done it—at the Pensacola Stock Exchange.

Q. For what purpose did you stop?—A. I stopped there to see the quotations on cotton.

Q. Now, then, you proceeded until you came to Mr. Greenhut's, did you?—A. Yes, sir.

Q. Then state what occurred—exactly what occurred thereafter, anything and everything from the moment that you addressed him until the time that you were finally taken apart.—A. I passed down the street and I saw Mr. Greenhut and Mr. Lischkoff talking. I spoke to both. I says, "Good morning," and I says, "Mr. Greenhut, I would like to see you when you are at leisure," and Mr. Greenhut said, "I am at leisure now," and I says to Mr. Greenhut, "Don't let me interrupt you; any time during the day will do," and Mr. Lischkoff says, "I am through," and he left or started to turn to go back up the street toward his place of business, and Mr. Greenhut says, "Come in." He stepped back into the back part of his office there and I went on [in], and I asked him why he had sued us. He says, "Well, I do not know anything about it; you will have to see my lawyer about it." I says, "Mr. Greenhut, I think you do know something about it. I think you were a director of the American National Bank when this paper that I am sued on was sold and transferred," and I says, "We did not sue you when we had to sue you without seeing you about it or without talking to you about it."

"We did everything we could to avoid the suit; we did everything we could to get a settlement of that before we sued you," and I talked on with him regarding this matter in that way, and I reminded him of the fact that Mr. Egan had tried to get

a settlement with him before we sued him on the \$1,500 debt, and I found out after talking with him it seemed it was impossible to get a settlement with him that way, and I says to him—I finally told him that I thought that if he had been a gentleman he would not have done it, and he said, "I am as much a gentleman as you are"—being a director in the bank and refusing to pay a paper and letting us sue him on it, and he says he was as much of a gentleman as I am. I says, "Mr. Greenhut, I won't dispute that with you on that point. I do not want any trouble with you," and when I said that to him, why, he made a motion that way, like he would strike me with his fist, and says, "If you fool with me I will do you up here," and I says, "No, I reckon not," and I stood there for a moment hesitating, and I turned to go out. He come on following me and he said something to me.

I do not know what he said, and when he said that I told him that he lied to me about the Moreno paper, and as I told him that I turned around, and Mr. Greenhut he struck me here, and I struck him with my left fist, and then I shoved him off, and when I shoved him back he kind of stumbled back like—he looked to me like he almost fell down; then he came forward at me and I pulled out my knife and cut him, and we fought on out on the street there, and I made several lunges for him and he hit me several licks with his fist, and finally he caught hold of my arm here with his right hand, and after he caught my arms I reached around and caught hold of his other arm out in the streets, and then I holloed to old man Hyer to come there and get him—

Mr. HIGGINS. Mr. President, I do not propose to quote otherwise from this testimony. I will simply state that Greenhut, whose affidavit is set out on the answer of the respondent, denies that he struck O'Neal or was the aggressor in any way. This testimony was not delivered in the presence of the Senate, and you can only get it as you read it or as it is read in your presence, and for that reason I have not undertaken to make a running statement of it myself. I thought it due to the gravity of this charge and to a right judgment on this article that the very words of O'Neal should be read to the Senate.

Now, in that you will see that he says that he reproached Greenhut; he began the trouble. He reproached him about bringing the suit against the bank when he said Greenhut knew it was an unfounded suit, and then there was other discussion as to the unfairness. Now, here is a very significant statement that he makes:

He says: "I think you were a director of the American National Bank when this paper that I am sued on was sold and transferred," and I says, "We did not sue you when we had to sue you without seeing you about it or without talking to you about it. We did everything we could to avoid the suit; we did everything we could to get a settlement of that before we sued you," and I talked on with him regarding this matter in that way, and I reminded him of the fact that Mr. Eagan had tried to get a settlement with him before we sued him on the \$1,500 debt, and I found out after talking with him it seemed it was impossible to get a settlement with him that way, and I says to him—I finally told him that I thought that if he had been a gentleman he would not have done it, and he said, "I am as much a gentleman as you are."

In other words, he goes in there and reproaches him, and when he could not get a settlement with him then he took his settlement.

Now, Mr. President, turn to the answer of O'Neal. After reciting the fact in his answer that he failed in the cause, on page 204 he says:

That it is not true that the assault charged in the said affidavit was committed by the respondent solely because and for the reason that the said Greenhut had instituted the suit aforesaid against the said American National Bank or to interfere with and prevent him, the said Greenhut, from exercising and performing his duties as an officer of this court.

Now, you will observe that that denial is an admission. While he says he did not reproach him solely for that, the fact that he says he did not do it solely for that admits that he did it in part for that, and therefore admits that he did it on that account. Consequently, Judge Swayne was bound to see that O'Neal had here admitted the substantial

avermment of Greenhut's allegation. Now, he comes in. What is the alleged purgation?

That in truth the respondent never contemplated at any time any interference with the said Greenhut as trustee as aforesaid or contemplated any affray with the said Greenhut or any personal conflict with him until he saw the threatening attitude of the said Greenhut toward him, the respondent, as hereinbefore set forth, and that so far as respondent can determine from the actions of the said Greenhut, who was the aggressor as aforesaid, the cause of the said affray was the remark of respondent to the said Greenhut concerning the said Greenhut's action in repudiating his obligation to pay the said acceptance.

And respondent disclaims the existence on his part at any time of any intent to interfere with, prevent, impede, or delay the said Greenhut in the prosecution of the said suit against the said bank, or to interfere with or impede or prevent him in anywise in the execution or performance of any of his duties as such trustee; and specially disclaims any attempt to do any act which might savor in the slightest degree of contempt of this honorable court.

There, Mr. President, is the admission—a fatal admission, right in the midst of that attempted disclaimer of contemptuous purpose, of what his acts were.

Mr. Manager PALMER. Mr. President, will you allow me to call your attention to Mr. Greenhut's affidavit, on which this proceeding was founded?

That said assault and attempt to murder was committed by said O'Neal, as aforesaid, solely because and for the reason that affiant, as an officer of the United States district court—

That portion of the answer is a direct denial of that portion of the complaint.

Mr. HIGGINS. Exactly; but, Mr. President, the converse of the proposition is always not as true as the proposition. While it is specific for Greenhut to charge that he had come there solely for that purpose, it would have been entirely within Mr. O'Neal's right, if it had been true and he had chosen to assert it under the responsibility of his counsel, Mr. Blount, who was acting for him, to say, "I did not reproach him for that reason at all, but entirely for another reason." But when he denies it in the terms of the allegation, then it is an evasive denial, and I thank the learned manager for allowing me to make that clear before the Senate.

The attempted explanation or excuse for it will, in my opinion, not bear examination.

Now, Mr. President, in the face of this condition of things, was Judge Swayne to accept this evasive, uncertain undertaking to deny and not deny these fatal admissions of culpability on the part of O'Neal? Was he to accept them as a statement in law which justified his discharge and justified the enthusiasm which the learned manager who last addressed the Senate showed for what was once spoken of another as "this fine, consummate flower of our American citizenship?" The learned managers say that O'Neal by this statement purged himself.

The learned manager who will follow me will not deny the difference in the rules of law as to contempt and purgation between the common law and equity. This was a case in equity. Scarrit Moreno was adjudicated a bankrupt, and bankruptcy proceedings are equitable proceedings. Greenhut was his trustee or receiver. He was therefore the agent and minister and officer of a court of equity. On that the law that has been invoked is laid down as old as Blackstone, from whom I shall read. In the first place, I will read from Rapalje on Contempt:

In chancery the answer of a party charged with contempt is not conclusive, and the truth of the answer may be examined into and disproved. In such a case, however,

the accused may adduce evidence extrinsic to his answer and call witnesses to testify in his behalf; and, though not conclusive, his answers to the interrogatories are evidence in his favor, to be considered in connection with the other evidence in the case. (Ropalje on Contempt, sec. 120.)

Now, I read this quotation from Blackstone, with which every student of law is familiar:

It can not have escaped the attention of the reader that this method of making the defendant answer upon oath to a criminal charge is not agreeable to the genius of the common law in any other instance, and seems, indeed, to have been deprived to the courts of King's Bench and common pleas through the medium of the courts of equity. For the whole process of the courts of equity in the several stages of a cause, and, finally, to enforce their decrees, was, till the introduction of sequestrations, in the nature of a process of contempt, acting only in personam and not in rem. And there—

That is, in equity—

after the party in contempt has answered the interrogatories, such his answer may be contradicted and disproved by affidavits of the adverse party; whereas in the courts of law, the admission of the party to purge himself by oath is more favorable to his liberty, though perhaps not less dangerous to his conscience, for if he clears himself by his answers the complaint is totally dismissed. (4 Blackstone, 287.)

This, therefore, was a proceeding in equity, where it was the right and duty of the judge to hear evidence on either side, and no objection was made to that at the time, as none can be made now.

The learned manager who has assumed especially the discussion of this case rests the demand for the condemnation of Judge Swayne of impeachment and of conviction on the ground that it was clearly outside of the jurisdiction of his court by reason of the act of 1831. Of course O'Neal was not an officer of the court. He therefore was not within the jurisdiction as limited by the act in that respect. But the learned manager goes on to say that he was not obstructing the administration of justice or it was not misbehavior so near the court as to obstruct the administration of justice. He does admit, however, as I understood him, that if he is guilty it was resistance to an officer of the court, though I do not know whether I was right in understanding the learned manager distinctly to admit that.

Now, Mr. President, I beg leave to refer to the former discussion which I have made of this question and to the decisions of the several courts in respect to it. The learned manager falls back upon Poulson's case in the circuit court of Pennsylvania, made by a justice of the Supreme Court of the United States sitting in that circuit and shortly after the enactment of the statute of 1831. In that Mr. Justice Baldwin said that clearly after the enactment of that act an offense which was subject to indictment could not be made the subject of contempt. He and the learned manager [Mr. Clayton], who also addressed the Senate this morning on that subject, rely upon *ex parte Robinson*, in 19 Wallace.

I wonder that the learned managers remain back in cases so old and going to the circuit courts when they have the utterance of the Supreme Court upon this subject, which leaves it without any question. I think the Senate is entitled at least to be treated with the respect which is due to the court of last resort by letting it have whatever is the real law or the last utterance. I beg to read from the case of *Savin*, petitioner, in 13 United States, 275, and that case was decided as far back as 1888, where the court say:

It is contended that the substance of the charge against the appellant is that he endeavored, by forbidden means, to influence or "impede" a witness in the district

court from testifying in a cause pending therein, and to obstruct or impede the due administration of justice, which offense is embraced by section 5399—

That is the second section of the act of 1831 making contempt offenses indicate in certain cases—

and, it is argued, is punishable only by indictment. Undoubtedly the offense charged is embraced by that section, and is punishable by indictment. But the statute does not make that mode exclusive, if the offenses be committed under such circumstances as to bring it within the power of the court under section 725, when, for instance, the offender is guilty of misbehavior in its presence, or misbehavior so near thereto as to obstruct the administration of justice. The act of 1789 did not define what were contempts of the authority of the courts of the United States in any cause or hearing before them, nor did it prescribe any special procedure for determining a matter of contempt. Under that statute the question whether particular acts constituted a contempt, as well as the mode of proceeding against the offender, was left to be determined according to such established rules and principles of the common law as were applicable to our situation.

The act of 1831, however, materially modified that of 1789, in that it restricted the power of the courts to inflict summary punishments for contempt to certain specified cases, among which was misbehavior in the presence of the court, or misbehavior so near thereto as to obstruct the administration of justice. (*Ex parte Robinson*, 19 Wall., 505, 511.) And although the word "summary" was, for some reason, not repeated in the present revision, which invests the courts of the United States with power "to punish by fine or imprisonment, at the discretion of the court, contempts of their authority" in certain cases defined in section 725, we do not doubt that the power to proceed summarily for contempt in those cases remains, as under the act of 1831, with those courts.

The facts in this case of Savin were the attempt to deter a witness in attendance upon a court of the United States in obedience to a subpoena, and while he is near the court room, in the jury room temporarily used as witness room, from testifying for the party in whose behalf he was summoned, and offering him, when in the hallway of the court, money not to testify against the defendant, and the court held that that is misbehavior in the presence of the court.

So you have here the final decision that because the act was indictable was no reason why it was not punishable by Judge Swayne. You have the law from Blackstone's time, and from time immemorial before, that in this equity proceeding it was his duty to hear the evidence of both sides. This same case of Savin goes on to lay down that it was not necessary to propound interrogatories, but that a rule to show cause was proper. The same case lays down the further principle that the motion or charge need not be under oath or testified to by affidavit. O'Neal had the opportunity to defend himself, to appear and to answer, and he took advantage of it.

Now, that brings you to the merits of the case. On this it is claimed that the punishment of O'Neal was an unjust judgment. It was claimed before Judge Pardee in the circuit court, in a case that was argued before all three judges, that because the Judge was not in the district at the time, and because the court was not in session, and further because Greenhut's place was 400 feet away from the court room, there was no obstruction in the presence of the court; and that was laid down as a further reason why he should be discharged on habeas corpus.

Judge Pardee in his opinion says:

The charge of contempt against the relator is based upon the fact that he unlawfully assaulted and resisted an officer of the district court in the execution of orders of the court and in the performance of the duties of his office under such orders, and in that respect it would seem to be immaterial whether the place of resistance was 40 or 400 feet from the actual place where the court was usually held, so long as

it was not in the actual presence of the court nor so near thereto as to embarrass the administration of justice.

Under the bankruptcy act of 1898, section 2, the district courts of the United States, sitting in bankruptcy, are continuously open; and under section 33 and others of the same act a trustee in bankruptcy is an officer of the court. The questions before the district court in the contempt proceedings were whether or not an assault upon an officer of the court, to wit, a trustee in bankruptcy for and on account of and in resistance of the performance of the duties of such trustee, had been committed by the relator, and, if so, was it under the facts proven a contempt of the court whose officer the trustee was?

Unquestionably the district court had jurisdiction summarily to try and determine these questions, and having such jurisdiction said court was fully authorized to hear and decide and adjudge upon the merits. (In re Savin, 131 U. S., 267, 276, 277.)

Now, Mr. President, that is the decision of the circuit court of appeals as to this defense, which is sought to be set up here to-day, that Judge Swayne should be condemned for this proceeding because it was 400 feet from the court room, and in the face of the decision in this very litigation when it was carried up upon appeal by habeas corpus.

Now, the course of Judge Swayne seems to me to disclose in every phase of it a most complete lack of malice, the gravamen of the charge made in the article on this head. He had nothing against O'Neal. O'Neal was a citizen of that town and president of a bank. There is no evidence here of any differences between them in one way or another. This was a case *inter partes*, brought to the court by Greenhut under affidavit. There was, I think, without any unfairness or characterization, an attempt at assassination. Under the rule as laid down by Blackstone, there being a dispute as between O'Neal and Greenhut, it was for the Judge to determine it upon the testimony. The learned managers have read the Judge's charge for various reasons, both to show that he acted on insufficient reason and unfairly and to show that it was not much of a decision after all. I beg to differ with them. I grant you that this was not a decision of an indictment for assault and battery.

It was not the direct question before the court as to whether or no O'Neal should be acquitted by the jury under a charge of the court for making an assault with intent to kill and as to the law that governs that. But when the defense is made there, as it was by him, and the testimony I have had read to the Senate that he was not the aggressor, that Greenhut was the aggressor, then it became the duty of the Judge to lay down the rules of law which govern the conduct of people when it comes to determining what is right or wrong in an assault like this. The only ground on which O'Neal could pretend to justify the use of a dagger was that he could do it when he had retired to such a point that he could no longer retreat and then could strike in self-defense, but without the plea of self-defense he stood there a proven aggressor, and with no excuse for the use of a knife.

The case, Mr. President, then proceeded. I will state that Mr. Blount had demurred to the jurisdiction so as to raise that question under the statute of 1831. The Judge overruled that.

Upon the sentencing of O'Neal to sixty days' imprisonment he allowed a writ of error, that Mr. Blount might take the case to the Supreme Court of the United States, and granted a supersedeas, so that the imprisonment should not begin pending that proceeding.

He further certified, under the act of 1891, this question of jurisdiction to the Supreme Court, so that it could be heard there. The case

therefore came to the Supreme Court of the United States upon writ of error, and that court held that jurisdiction of the person and jurisdiction of the subject-matter not being challenged, the case stood before that court only as a dispute on its merits, and that such a question could not be reviewed in the Supreme Court of the United States on writ of error. Thereupon it went back, and O'Neal suffered imprisonment long enough to have a writ of habeas corpus. Then the case was carried up to the circuit judges, who delivered the judgment I have here already read from. Then, before imprisonment could be had, O'Neal died.

Mr. President, that is all we shall say about the O'Neal case. There was no evidence of malice, no evidence of want of jurisdiction, no evidence of injustice or unfairness; but I think that every judge and lawyer within my hearing would say that if Judge Swayne, on such a case as this brought before him and compelled to render judgment, had not treated it as a matter of proven contempt he would have brought himself much more nearly to deserving impeachment and conviction than by deciding contrariwise.

But, Mr. President, that is not the end of the O'Neal case. The O'Neal case is the beginning of the Swayne impeachment case. The testimony which has been read to the Senate, elicited with the utmost propriety and regularity in cross-examination, when O'Neal was tendered as a witness on his own behalf to swear in justification of his alleged misconduct in an act of violence, and was subject to cross-examination as to his criminal record in that regard, showed that he had been twice convicted for assault with intent to kill, and not for shooting across the street in the sugar-coated form put by the learned manager this morning; that at another time he had been convicted or plead guilty, which was the same thing, to the charge of carrying concealed deadly weapons, and that at another time he had been sued in a civil suit and a penalty imposed or damages recovered for a violent attack with a clawhammer upon a man—violent, vindictive, dangerous.

If ever there was evidence of malice it was what took place afterwards. By the evidence in this case the president of a bank, presumably a man of wealth, he employed counsel; he sent them to the Florida legislature, and he brought before it matters and carried on proceedings there in a way that, I submit, abused the confidence of that legislature.

Mr. Manager PALMER. Mr. President, will the counsel kindly refer to the record where there is any proof of that kind in this case before the Senate?

Mr. HIGGINS. The proof is found in the beginning of the learned manager's own argument, where he had read resolutions of the Florida legislature, which I will now ask to have read by the Secretary.

Mr. Manager PALMER. I respectfully submit that there is no testimony in this case that Mr. O'Neal, or anybody for him, ever had anything to do with the resolutions of the Florida legislature.

Mr. HIGGINS. I will say to the honorable manager that I proved that by Mr. Davis on cross-examination.

Mr. Manager PALMER. I did not hear it.

Mr. HIGGINS. I did.

Mr. Manager PALMER. I should like to see the place in the record where it appears.

Mr. HIGGINS. I can not turn to it at this time, but it is there.

Mr. Manager PALMER. I do not think there was any such testimony.

Mr. HIGGINS. And I was very careful to prove it.

Mr. President, I should like to have those resolutions reread.

Mr. Manager PALMER. All right; you may have them read if you wish.

Mr. HIGGINS. I ask the Secretary to read from page 61 of the record.

The Secretary read as follows:

Senate joint resolution in reference to Charles Swayne, judge of the United States court for the northern district of Florida:

Be it resolved by the legislature of the State of Florida, Whereas Charles Swayne, United States district judge of the northern district of Florida, has so conducted himself and his court as to cause the people of the State to doubt his integrity and to believe that his official actions as judge are susceptible to corrupt influences and have been so corruptly influenced;

Whereas it also appears that the said Charles Swayne is guilty of a violation of section 551 of the Revised Statutes of the United States in that he does not reside in the district for which he was appointed and of which he is judge, but resides out of the State of Florida and in the State of Delaware or State of Pennsylvania, in open and defiant violation of said statute, and has not resided in the northern district of Florida, for which he was appointed, in ten years, and is constantly absent from said district, only making temporary visits for a pretense of discharging his official duties;

Whereas the reputation of Charles Swayne as a corrupt judge is very injurious to the interests of the entire State of Florida, and his constant absence from his supposed district causes great sacrifice of their rights and annoyance and expense to litigants in his court;

Whereas it also appears that the said Charles Swayne is not only a corrupt judge, but that he is ignorant and incompetent, and that his judicial opinions do not command the respect or confidence of the people;

Whereas the administration of the United States bankruptcy act in the court of said Charles Swayne and by his appointed referee has resulted in every instance in the waste of the assets of the alleged bankrupt by being absorbed in unnecessary costs, expenses, and allowances, to the great wrong and injury of creditors and others, until such administration is in effect legalized robbery and a stench in the nostrils of all good people;

Be it resolved by the house of representatives of the State of Florida (the senate concurring), That our Senators and Representatives in the United States Congress be, and they are hereby, requested to cause to be instituted in the Congress of the United States proper proceedings for the investigation of the proceedings of the United States circuit and district courts for the northern district of Florida by Charles Swayne as United States judge for the northern district of Florida, and of his acts and doings as such judge, to the end that he may be impeached and removed from such office.

Resolved further, That the secretary of the State of Florida be, and is hereby, instructed to certify to each Senator and Representative in the Congress of the United States, under the great seal of the State of Florida, a copy of this resolution and its unanimous adoption by the legislature of the State of Florida.

Mr. HIGGINS. Now, Mr. President, here at the forefront of the presentation of this case to the Senate has been placed by the learned manager these resolutions, and I call the attention of the Senate to the fact that there is nothing left of all that is charged there except these two contempt cases and the matter of residence. In those resolutions it is said that Judge Swayne is "a corrupt judge," so "as to cause the people of the State to doubt his integrity, and believe his official actions as judge are susceptible to corrupt influences, and have been so corruptly influenced; * * * that he is ignorant and incompetent, and that his judicial opinions do not command the respect or confidence of the people," and that the appointment of referees by him in bankruptcy resulted—

in every instance in the waste of assets of the alleged bankrupt by being absorbed in unnecessary costs, expenses, and allowances, to the great wrong and injury of creditors and others, until such administration is in effect legalized robbery and a stench in the nostrils of all good people.

All that is said here was abandoned by the committee of the House who were sent there to investigate. It is in evidence in the certificates that have been filed—and I will shortly call attention to the special dates—that Judge Swayne during these years was holding court for the greater part of the year in the States of Texas, Louisiana, and Alabama. Is there any complaint there that he was a corrupt judge, an unjust judge, an unfit judge, or of the waste of the assets of bankrupt estates, or of forfeiting the confidence of the community? Not a word. The only other charges that are brought here are those that came outside of what the legislature of Florida had called to the attention of the House of Representatives and of the Senate in a vague endeavor to bolster up the contempt proceeding and the charge with respect to residence.

This case does not come into this tribunal with very clean hands. I submit the legislature of Florida—a body deserving of the highest respect and the confidence of the community—never would have passed these resolutions, let alone passing them unanimously, if they had been offered after, instead of before, the investigation of the House committee and the abandonment by them of the charges that caused the demand for impeachment.

Mr. President, that brings me to the matter of residence, and I shall not take very long about it. The testimony that it has been for us to adduce has, I think, cleared the atmosphere and explained the condition of things as respects Judge Swayne's residence during the time in question. As the learned manager this morning very properly admitted, Judge Swayne had a reasonable time in which to change his residence after the act of Congress altering the boundaries of his district and leaving his then residence out of his curtailed district. They say that he did not do it. In the statement of the learned manager who opened the case, in the efforts of the managers in the examination of their witnesses, and up until the argument this morning of the manager who has charge of the article of impeachment relating to residence, the case they have undertaken to make is that Judge Swayne had a residence outside of his district, namely, at Guyencourt.

You heard the witnesses from that neighborhood—three farmers, the owners of their land; the fourth, a farmer and a coal dealer, who furnished coal to the family; the fifth, a physician, who attended Mrs. Swayne, the mother of the Judge; another, the postmaster and station agent, who has knowledge of the going and coming of people to and from home; and Mr. Milton Jackson, the manufacturer, of Philadelphia, who had married Judge Swayne's sister in the same year of the Judge's own marriage and knowing with family intimacy the goings and comings—the testimony of all these put beyond the possibility of question that wherever Judge Swayne did live he did not live at Guyencourt. If there is any certainty in this case, that is the one certain thing. Well, he had to live somewhere. They say he did not live at Pensacola, but they do not yet undertake to say where he did live. But why did he not live in Pensacola? Because he was not there. How do you know he was not there? He went away when court adjourned. Why did he go away and where did he go? They do not know. Did he go to hold court elsewhere? Of course they do not know.

Mr. President, the fact is that he was holding court elsewhere. He did pay summer visits, and his family paid summer visits, to his old home in Delaware every year—a most convenient, admirable, and wise

arrangement, and one about which no complaint is to be made. But the fact is, as I have had occasion to state before, that the breaking up of his family residence at St. Augustine was concurrent with and contemporaneous with the other condition of things which dominated the domestic situation of that family and made it a broken household.

We all know of broken households; we all know of the customary condition where parent and children live together along through the ordinary course of life, and then comes some dominating influence that scatters them and sends them out. What was the influence here? The circuit judges had occasion to send Judge Swayne to Texas to hold court, to draft him to New Orleans to sit in the court of appeals, and to go elsewhere to hold court. They called on him to perform this work; and because, Mr. President, they had curtailed his district, so that he has nothing to do, they now turn around and impeach him for not staying there to do that nothing, drawn off, as he was, by the circuit judges to these other places.

While that was the case there was no reason that commanded the presence of his family at Pensacola. It was open to their election, Mr. President, not to go there. Judge Swayne was not subject to impeachment because his wife, his daughter, and his sons were elsewhere. What did they do? You had the intelligent, reliable story told here yesterday by his son, who, of course, knew all about these matters and had refreshed his recollection by looking at letters that he had received from time to time.

So it appears that Mrs. Swayne and her daughter paid visits in Chester County, Pa., and in Philadelphia; spent the summer at Guyencourt, and spent the other time around and at large, sometimes with the Judge at New Orleans, sometimes in Texas, and sometimes in Pensacola, but at other times where it pleased them to go, as they should be permitted to do, without subjecting him to impeachment. "But here," say some very good people of Pensacola—and very naturally—"he does not live here; his family is not here." Well, that is another proposition entirely. Finally they go to Europe and spend a year. The Judge went over with them one month and came back the next with his oldest son. Then, at last, they find a house in 1900; and yet the learned manager this morning had it in his heart to say that Judge Swayne bought the house in 1903 because the Florida legislature passed resolutions demanding his impeachment. I am surprised, Mr. President, at the statement of the manager, for the evidence is overwhelming that his family were residing there from 1900.

In the same way, it seems to be, the learned manager this morning distorted the facts when he said that while the family were there then Judge Swayne was holding court in Pensacola and after that neither he nor his family were there. Well, pray, how could he be holding court in Pensacola when he was holding court in Texas and elsewhere out of his district? Of course he could not be. After he came back there may have been more court days. Very likely there were. They are of value here as showing the place where you can locate him during that time.

I beg to have printed as a part of my remarks a calendar. I will say that we will introduce in evidence certificates from the clerks of the respective courts—the circuit court of appeals of New Orleans, various districts in Texas and Alabama, and Baton Rouge, in Louisiana—where Judge Swayne held court, the number of days that those

court records show him to be away from his district, and also the certificate of the days that he was holding court at Pensacola or Tallahassee, the two places for holding court in his district. We will show, according to a calendar we have had prepared, that, commencing in April, 1895, he was holding court in either the State of Alabama, Louisiana, or Texas, continuously engaged in the discharge of judicial duties outside of his district and in those States during the following months:

- 1895, four months, including April and May and November and December.
- 1896, eight months, including January to June and November and December.
- 1897, six months, including January to July.
- 1898, seven months, including January to May and November and December.
- 1899, six months, including January to June and October and November.
- 1900, six months, including January, May, June, September, October, and December.
- 1901, two months, including January and September.
- 1903, two months, including January and February.

We will also show from the records of the courts of Florida, Alabama, Louisiana, and Texas that he was continuously engaged in the discharge of judicial duties in those States during calendar months, as follows:

- 1895, ten months, from January 18 to July 16 and October 15 to December 21.
- 1896, nine months, from January 17 to July 1 and November 2 to December 19.
- 1897, eight months, from January 9 to July 3 and December 14 to December 21.
- 1898, eight months, from January 3 to June 8 and November 15 to December 17.
- 1899, nine months, from January 27 to June 5 and October 5 to December 5.
- 1900, eleven months, from January 7 to July 4 and September 3 to December 29.
- 1901, ten months, from January 7 to June 29 and September 2 to December 31.
- 1902, eight months, from January 1 to June 18 and November 6 to December 16.
- 1903, nine months, from January 12 to June 1 and September 30 to December 31.

Mr. President, I will now submit, as a part of my remarks, to be printed without reading, a calendar which will give the specific dates. I have had them summarized in that short form to show the time.

Mr. Manager PALMER. How many days do you make it, Mr. Higgins?

Mr. HIGGINS. I will give you that, if you please. This calendar makes the number of days on which court was opened and adjourned, Judge Charles Swayne presiding, in districts other than the northern district of Florida, 814; estimated days traveling to courts outside of district, 102; number of days in the northern district of Florida, 597—within 3 of 600; intervening days, such as Sundays, holidays, etc., distributed between the time when sitting in his district and sitting outside, 192 days. I have not added up the total of them, but it will make, during that time—three years—as I made the calculation, when holding court outside of his district, three hundred days in the year, and of course a much longer time than that, because he did not sit there every year that long.

Mr. Manager PALMER. I do not think it is worth while to raise any question about this business, because the certificates are in the record. But, in point of fact, we have gone over the certificates very carefully, and we find that the number of days he held court outside of his district was five hundred and seventy days during those years. That is all the certificates show. I do not propose to make any objection to counsel putting into the record anything he wants to, but there are the certificates, and if anybody is curious about them he can find out.

Mr. HIGGINS. I stand by our inspection, count, and calculation.

Mr. Manager PALMER. All right.

Mr. HIGGINS. I think it is as careful as that of the learned manager.

The papers referred to are as follows:

Calendar showing days upon which Charles Swayne, district judge, held terms of court from January 1, 1895, to January 1, 1904, being extracts taken from certificates furnished by clerks of United States courts submitted in evidence.

1895: Tallahassee, January 18 and 19; Tallahassee, February 4 and 5. Pensacola, February 6 and 7; Pensacola, March 4 to 18. Tallahassee, April 16, 17, 18. New Orleans, April 19, 20, 25 to 30. Baton Rouge, April 22 to 24. New Orleans, May 1 to 4 and 13 to 31. Pensacola, May 6 to 9. Tallahassee, July 16. Pensacola, October 15, 16, 17; Pensacola, November 5 to 16. Waco, November 18 to 30; Waco, December 1 to 21.

1896: Pensacola, January 17 and 18. Dallas, January 21 to 31; Dallas, February 1 to 29; Dallas, March 1 to 24. Pensacola, April 7 to 25. Waco, April 27 to 30; Waco, May 1 to 16. Dallas, May 18 to 30; Dallas, June 1 to 27. Pensacola, June 29 and 30; Pensacola, July 1. Tallahassee, November 2. Pensacola, November 4 to 13. Waco, November 18 to 30; Waco, December 1 to 19.

1897: Pensacola, January 9; Dallas, January 11 to 31; Dallas, February 1 to 27; Fort Worth, March 1 to 13; Pensacola, April 6 to 16; Waco, April 20 to 30; Waco, May 1 to 15; Dallas, May 17 to 31; Dallas, June 1 to 30; Dallas, July 1; Pensacola, July 2 and 3; Pensacola, December 14 to 21.

1898: New Orleans, January 3 to 14; Pensacola, January 14 and 15; New Orleans, January 16 to 31; New Orleans, February 1 to 28; New Orleans, March 1 to 31; New Orleans, April 1 to 30; New Orleans, May 1 to 28; Pensacola, May 28 to 31; Pensacola, June 1 to 4; Tallahassee, June 6, 7, 8; Pensacola, November 15 to 19; New Orleans, November 21 to 30; New Orleans, December 1, 2, 3; Pensacola, December 7 to 17.

1899: Pensacola, January 27 and 28; New Orleans, January 30 and 31; New Orleans, February 1 to 28; New Orleans, March 1 to 18; Pensacola, March 20 to 25; Birmingham, April 4 to 30; Pensacola, May 1 to 6; Tallahassee, May 9 to 13; Pensacola, May 15 to 20; Birmingham, May 22 to 31; Birmingham, June 1 to 5; Pensacola, October 5 and 6; Huntsville, October 9 to 30; Huntsville, November 1; Pensacola, November 6 to 18; Tallahassee, November 20 to 24; Pensacola, November 25 to 30; Pensacola, December 1 and 2; Tallahassee, December 4 and 5.

1900: Huntsville, January 7 to 19; Pensacola, January 23 to 26; Pensacola, May 4 to 19; Tallahassee, May 22 and 23; New Orleans, May 24 to 31; New Orleans, June 1 to 15; Tyler, June 18 to 28; Pensacola, July 4; Birmingham, September 3 to 30; Birmingham, October 1 and 2; Pensacola, October 3; Birmingham, October 4, 5, 6; Pensacola, November 8 to 17; Tallahassee, November 19 to 22; Pensacola, November 23 to 30; Pensacola, December 1; Tyler, December 3 to 29.

1901: Huntsville, January 7 to 19; Pensacola, January 2 to 6 and 20 to 31; Pensacola, February 5 to 28; Pensacola, March 1 to 30; Pensacola, April 1 to 30; Pensacola, May 1 to 31; Pensacola, June 1 to 29; Birmingham, September 2 to 16; Pensacola, November 4 to 18; Tallahassee, November 18 to 22; Pensacola, November 23 to 30; Pensacola, December 1 to 31.

1902: Pensacola, January 1 to 31; Pensacola, February 1 to 28; Pensacola, March 1 to 23; Tallahassee, March 24 to 27; Pensacola, March 28 to 31; Pensacola, April 1 and 2; Pensacola, June 16, 17, 18; Pensacola, November 6 to 29; Pensacola, December 1 to 16.

1903: Tyler, January 12 to 31; Tyler, February 1 to 16; Pensacola, March 2 to 14; Pensacola, April 15 to 30; Pensacola, May 1 to 17; Tallahassee, May 18 to 23; Pensacola, May 24 to 30; Pensacola, June 1; Pensacola, September 30; Pensacola, October 1 to 31; Pensacola, November 2 to 22; Tallahassee, November 23 to 28; Pensacola, November 29 and 30; Pensacola, December 1 to 31.

MEMORANDUM.

Number of days on which court was opened and adjourned, Charles Swayne, judge, presiding, in districts other than northern district of Florida.....	814
Same in the northern district of Florida	597
Intervening days, such as Sundays, holidays, etc	192
Estimated days traveling to courts outside of district.....	102

NOTE.—Period from January 1, 1895, to January 1, 1904.

Mr. HIGGINS. The fact, therefore, is that the suspicion, the idea, the notion that underlies this charge, which was carried to the Florida legislature and brought here, is that a man lives where his family does,

and if his family is not there he does not reside there. But it is a mixed question of law and fact, dependent upon the circumstances; and in this case his family did not go to Pensacola, because he was away from there.

Further, you have the testimony that he could not get a house there, and that he tried to get one.

The learned manager said this morning that in 1898 he registered as from St. Augustine. Mr. President, for years I dated my letters "1856." I could not get rid of the habit of dating my letters as of 1856. It is an inadvertence, and that is brought up here. The same year he registered at the Escambia Hotel as from the "city," leaving out of the count his residence at Captain Northrup's for years, such as it was. Emphasis is laid upon the fact that he registered as from St. Augustine, when it is a proven fact in the case that the family had left there two years before. And it is with flimsy stuff like this that this great crime is sought to be established.

Now, the learned managers have ventured, I think once too often, to refer to the case of *The People v. Owers*, in 29 Colorado, 535. That was a quo warranto to oust a judge because he did not reside in his district in compliance with the provisions of the statute of Colorado. He had held office for six years, being elected for that term, and subsequently was reelected and had been about eight months upon his new term when these proceedings were taken to oust him. The proceeding was filed in September, 1901. He had been married in 1897 in Washington, D. C.

Shortly after such marriage brought his wife to Denver, living with her at the residence of Doctor Hershey, 1311 Sherman avenue, until April, 1898.

* * * * *

From the date of defendant's marriage to the present time the wife and family of defendant have been in Lake County—

Where his residence ought to have been, his assumed residence—it takes the same place as Pensacola here—

but once, and then for less than ten days, during which time she visited at the home of a friend in Leadville.

He had gone with his wife for five or six months to California, and during all this time, except when the court was in session, he was abiding in Denver with his wife.

Now, the fact was in that case that the judge was unable to live in such an altitude without serious physical trouble. So he kept away from Lake County as much as he could and was at Denver. Those were the facts of the case—a very much stronger case than the present one. He voted and he campaigned in his canvass for reelection. The only room he had was in the court-house, where he had some furniture. But he lived without paying any rent in rooms that belonged to the county. There was no pretense that his family was there. There was no pretense that he stayed there except at the time he held court. But he had a good reason, he had a good excuse, and that was the effect of the elevation upon his health.

It might be urged with great force, and doubtless it was in that case, that if his health did not permit him to comply with the provisions of the act by which he had his tenure of office he ought to have resigned and let somebody else take it who could comply. But the court did not so see it, and yet that is the case which has been cited here to

establish the proposition that a constructive residence will not comply with the provisions of such statutes.

Mr. President, one word only, and that with regard to the private car. There has been nothing proved here whatever to show that Judge Swayne passed upon these accounts as charged. There is no allegation in the articles that he accepted this courtesy or used the car with any corrupt purpose. They stand here entirely without evidence, with nothing but a naked statement of a car conductor that going from Delaware to Jacksonville the Judge said he had ridden in that car to California. But the respondent does not dispute it. It is stated in the answer. The facts are that there were four or five in the party from Wilmington and Washington, two getting on at Washington, to Jacksonville, taking about two days. We do not know how much they ate. It never came before the Judge to determine.

But a much more serious question arises in the California case, for there the Judge provisioned the car, and in it he found property of the company. It consisted of some liquids; how much or what is not disclosed by the testimony. When he left the car he left as much liquid as he found. Did he or did he not? How much of the property of the railroad did he embezzle? How much did he take? That is the magnitude of the question before the Senate on this article of impeachment. *De minimis non curat lex*. The law does not care about little things. Out of the insignificance of this item has come this charge, and upon it is based the gravity of utterance by learned managers, rich and full with quotations from Scripture, bringing down the prophets and the apostles and all on the unhappy head of the Judge; and the great question, though it happens no wine or improper substance was included in the liquid, is whether he did not find more liquid than he left.

Mr. President, in connection with that, the learned managers have ventured to ask your time and to address their attention and to direct yours in the determination of what are and what are not within the meaning of the Constitution impeachable offenses. And to this contention have we come at last. It has reached from O'Neal and Belden and Davis, who knew not of the private car, for it was at Jacksonville and they lived at Pensacola; and there you have the whole range of this prosecution, from malice to mischievous nothing.

Mr. President, I end as I began. The word I read in the newspapers of the resolution favoring the adoption of articles of impeachment struck me with a sensible shock, and there has been no moment from then until now that it has not been my duty to give this cause the most thorough consideration and investigation.

There has been no moment when the commanding feature of it has not been the unhappy, the unfortunate, the unjust, the unjustifiable, the dangerous attack from the legislature upon the independence of the Federal judiciary. Its genesis and hatching was in the O'Neal and Davis and Belden contempt cases. If there has been any wrath, if there has been any moral surging here, it is because of the feeling that lay behind the act of 1831 to curtail the power of the courts so mainly to commit people to jail without the verdict of a jury. It is an old contention. It was rife when Jefferson came in as President. It has its long history. But to-day everybody rests in the confidence of the judges of the country; and this power can be left in their hands and will not be abused. It is a wholesome one. It is one that can not be

taken from them without great peril to the serious interests of this people. If you can arm a ruffian like O'Neal with his dagger, then you can unloose others at every judge in the land, as you hold over them a weapon even more potent than O'Neal's knife.

This case does not merely affect the respondent. It touches that element of integrity which is self-protection and the power to enforce its judgment—one in the Davis and Belden case and the other in the O'Neal case—without which courts are impotent, and if they have not the power to punish for contempt, they become themselves the object of contempt.

I have absolute confidence, Mr. President, that the Senate, this great tribunal, will not deliver that blow either at the respondent or at the Federal judiciary.

Mr. FAIRBANKS. I move that the Senate sitting in the trial of the impeachment take a recess until 10 o'clock to-morrow morning.

The motion was agreed to; and (at 4 o'clock and 48 minutes p. m.) the Senate sitting for the trial of the impeachment took a recess until 10 o'clock to-morrow morning, February 25.

The managers on the part of the House and the respondent and his counsel retired from the Chamber.

IN THE SENATE, *February 25, 1905.*

The PRESIDENT pro tempore (at 10 o'clock a. m.). The hour to which the Senate in the impeachment trial took a recess has been reached, and the Senator from Connecticut [Mr. Platt] will take the chair.

Mr. PLATT, of Connecticut, assumed the chair.

The PRESIDING OFFICER (Mr. Platt, of Connecticut). The Senate sitting in the impeachment trial of Charles Swayne, judge in and for the northern district of Florida, at 5 o'clock last evening took a recess until this hour, and now resumes its session.

The managers on the part of House of Representatives (with the exception of Mr. Clayton) appeared and were conducted to the seats assigned them.

The respondent, Judge Charles Swayne, accompanied by his counsel, Mr. Higgins and Mr. Thurston, entered the Chamber and took the seats assigned them.

Mr. GALLINGER. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The Secretary will call the roll.

The Secretary called the roll, and the following Senators answered to their names:

Allison, Ankeny, Bacon, Bailey, Ball, Bard, Bate, Berry, Beveridge, Burrows, Clark of Wyoming, Culberson, Daniel, Dick, Dolliver, Foraker, Foster of Louisiana, Frye, Fulton, Gallinger, Gamble, Gibson, Gorman, Hale, Hansbrough, Heyburn, Kean, Kittredge, Knox, Latimer, Lodge, Long, McEnery, McLaurin, Mallory, Martin, Millard, Morgan, Nelson, Overman, Perkins, Pettus, Platt of Connecticut, Platt of New York, Smoot, Teller, and Warren.

The PRESIDING OFFICER. On the call of the Senate 47 Senators have answered to their names. A quorum of the Senate is present. The counsel for the respondent will proceed.

Mr. THURSTON. Mr. President, I stand here to raise the last voice that can ever be heard this side the judgment seat of God in behalf of the personal honor and judicial integrity of this respondent, Charles Swayne. I realize fully the responsibilities of my position, and I shall endeavor to meet them as best I can. I also realize as deeply as any other man can how important it is not only to my client but to every American man, woman, and child that justice shall be done and true deliverance made.

I would not dare in this august tribunal to suggest, as I might in some other court, that any of the charges in this case are trivial or that any of the evidence presented is unworthy of serious consideration, for it must be accepted that anything presented or permitted here is worthy to come in.

If in my ardor for my client I may say some things that were better left unsaid, I ask in advance the indulgence of the Senate, and if I may leave unsaid some things that I should have said, or if I fail to present this respondent's case as fully and completely as some other abler advocate might have done, I ask the forgiveness of himself and of those who love him.

If in this discussion I animadvert upon some of those who have followed and persecuted this respondent, I shall not thereby refer to the honorable managers of the House of Representatives, whose conduct of this trial has been just and fair, nor shall I mean those who in the daylight or in the Senate have borne testimony against him; but I shall refer to those alone whose envenomed shafts have been hurled from out the darkness and who like coyotes have barked at his heels through all the long night of his trial and his travail.

My position in the order of argument has been such that at the most I have had but a few moments in which to attempt to arrange in my own mind a consecutive order of presentation. I have been unable to bring into the Senate a carefully prepared address, replete with literary and oratorical gems, to charm the Senate and astonish posterity, but in my humble way I shall speak in behalf of the respondent in language as simple as my belief in his innocence is sincere.

At last Charles Swayne has escaped from the pursuing fury of slander, vindictiveness, and calumny, and is safe in the Senate of the United States, under the shield of the law. At this bar that wicked jade yeleft Common Rumor can not be heard, and through these sacred portals vindictiveness and hate can not follow or malice enter in. Here he is to be tried by the evidence and judged by the law, and those of us who have faith in his honor and integrity believe that for his traducers the clock of fate is already striking 12 and the hour of his deliverance is near at hand.

This man stands here with more than liberty or life at stake. He is already on the sunset side of the mountain of life, up whose rugged steep he has so gallantly and persistently climbed. There is before him, at the best, but a little while to wait in the gathering twilight until he hears the summons from the Great Beyond. Whether he shall pass his few remaining days in honor or disgrace means much to him and to his friends.

Mr. President, I have no further observations to make on this case except to proceed in a plain and simple way to a discussion of the law and the evidence. First, I feel compelled to ask your attention while

in a dry and uninteresting manner I present certain views of the law that have been raised in this case upon the pleas to the jurisdiction as to the first seven articles of the articles of impeachment.

In the printed brief originally filed in behalf of the respondent a demonstration, based upon the authorities, was made, to the effect that no clear light is to be derived as to the meaning of the phrase "other high crimes and misdemeanors," *so far as that phrase relates to the impeachment of English and American judges*, except from the English and American judicial impeachment cases in which it has been applied to that subject. Instead of attempting to meet that reasonable and obvious contention upon its merits, the managers have evaded it by propounding a series of generalities, based upon principles drawn, in the main, from political impeachments which throw no real light upon the subject. In the course of that evasion the following remarkable statement has been made:

Said the managers in their brief:

For the first time in impeachment trials in this or any other country the claim is made that a judge can be impeached only for acts done in his official capacity.

The fact that that statement does not fully relate the history of impeachment cases will appear by consideration of those cases. After the impeachments for bribery, pure and simple, of English judges are put aside but two judicial impeachments remain in the entire history of the English people—that is, the impeachment of judges.

Judges, like all others, can be impeached for treason not committed upon the bench or in judicial affairs. They can be impeached for bribery by the strict terms of the Constitution, bribery committed anywhere, without regard to whether they were sitting upon the bench at the time. But as to other causes of impeachment I challenge the honorable managers to show me any case in history, English or American, where a judge has been impeached for any other crime or high misdemeanor except one alleged to have been committed in connection with his exercise of judicial authority. In saying that I do not refer to some impeachment cases that have happened in States and under State constitutions, for many of the constitutions of the several States have provisions largely at variance with those of the Constitution of the United States upon this subject.

But four judicial impeachments have taken place under the Constitution of the United States. It was admitted by the House of Commons in England and by the House of Representatives in the United States by the form of the articles they presented in these judicial impeachment cases that, excepting treason or bribery, neither an English nor a Federal judge could be impeached except for judicial misconduct occurring in the actual administration of justice in connection with his court, either between private individuals or between the Government and the citizen.

The statement of the honorable managers in their brief—

For the first time in impeachment trials in this or any other country the claim is made that a judge can be impeached only for acts done in his official capacity—

is contradicted by the judicial history of every case of impeachment of a judge in Great Britain and the United States.

Mr. Manager Olmsted was greatly mistaken when he said in his argument:

One year later, the Senate having convicted John Pickering, Federal judge in a New Hampshire district, upon a charge of drunkenness—

The article exhibited against John Pickering charged him with drunkenness upon the bench, and was limited to that charge, for the framers of that impeachment well knew that the drunkenness of the judge was no ground for impeachment under the Constitution of the United States unless he carried that drunkenness upon the bench.

The articles against Pickering read:

Being then judge of the district court in and for the district of New Hampshire, did appear on the bench of the said court for the purpose of administering justice in a state of total intoxication, produced by the free and intemperate use of inebriating liquors, and did then and there frequently in a most profane and indecent manner—

That is, on the bench, while administering justice—

invoke the name of the Supreme Being, etc.

It was perfectly understood by every constitutional lawyer then, as it should be understood now, that the personal misconduct of an English judge off the bench has never furnished the ground for impeachment, and for the well-understood reason that under the English constitution, as it has been called, they provided for two methods of removing judges from the bench—one by impeachment for high crimes and misdemeanors and the other upon address to the sovereign by both houses of Parliament.

When we came to frame our Constitution we adopted from the English constitution the term "treason, bribery, and other high crimes and misdemeanors." The question was mooted in that convention as to whether or not we should also embody in our Constitution the English provision for the removal of Federal judges by address of the two Houses of Congress to the President.

Understanding perfectly well, as the debates will show, that impeachment would only lie for a crime or offense committed in connection with the judicial office and the administration of justice, they rejected the proposed clause providing for removal by address. The framers of our Constitution did this because they were tenacious of the stability of the tenure of office of our Federal judges, and were fearful that if they enlarged the impeachment provision some of the States, by reason of local prejudice, might proceed criminally against them, and upon conviction of crime base articles of impeachment thereon.

Mr. President, I state here and now that the contention made by one of the honorable managers that a judge can be impeached under the Constitution of the United States for a crime committed as an individual against a State law has no foundation in any case that has ever been known of on the earth, was not thought of as possible by the framers of our Constitution, and is not the law to-day. It would leave a Federal judge at the mercy of a local condition, inimical as it might be to the Federal Constitution.

The case of Humphreys has been cited as a case where a Federal judge was impeached for other than judicial misconduct. Yes, Humphreys was impeached for treason. Any judge can be impeached for treason or for bribery, no matter where or how committed; but the only charge in his impeachment other than treason was the charge of judicial misconduct as the judge of the court, in the court, and acting in the administration of justice.

Mr. President, that the framers of our Constitution well knew the limitations they were imposing upon the right of impeachment is further attested by the fact that in the original draft of that great

document the language was "for treason, bribery, or maladministration," and the word "maladministration" has crept into some of the constitutions of our several States.

Upon the consideration of that question on the floor of the convention it was moved to strike out "maladministration" and insert "other high crimes and misdemeanors," and for the very reason that the term "maladministration" was a loose term that might mean, under the decisions of the Senate in the future, much or little; that it might cover impeachments at one period of time by one party in power that it would not cover at another period of time with another party in power. They struck it out because it was too large a term, too loose a term, and they inserted in its place those definite words, "high crimes and misdemeanors," taken from the English constitution with parliamentary construction already attached.

We took that provision from the English constitution and with it we took the interpretation that was placed upon it by the *lex parliamenti*, the law of Parliament, established by the adjudications in the great tribunal. That provision meant then what it meant in England at the time. Mr. President, that provision meant then what it has meant ever since. It meant then what it always must mean.

From the debates in that convention it does appear that those words were adopted with that construction upon them because it was claimed that it would be unwise to permit even the Congress of the United States, by ever making something a crime that was not then a crime, to enlarge the operation of that impeachment provision of the Constitution, or to repeal some of those things which then constituted crimes, and thereby prevent the impeachment of those who committed them.

Sir, that provision of the Constitution was embodied in that great instrument with a meaning that can never be changed by the Congress of the United States. It was embodied there with a meaning which will remain the same to the end of time. It furnishes the limitation with which the power of Congress can be exercised in impeachment cases.

I insist that for the first time in this case it is even suggested by constitutional lawyers that that term permits the impeachment of a judge simply because he has been tried and convicted in a court of a State for a crime against the statutes of a State, or because in his private life he has been impure or improvident, or because of any other shortcomings or failures exhibited in his career except those which relate to the administration of justice in the court over which he presides.

Mr. President, before proceeding to discuss the articles and the evidence, I call your attention to the fact that this is a criminal proceeding, and the respondent is charged with a crime. That question was settled by the Senate some days since upon the vote taken on the question of the admissibility of evidence. It is certain that this proposition is true, because the last portion of section 2 of article 3 of the Constitution of the United States provides that "the trial of all crimes, except in cases of impeachment, shall be by jury," and thereby the framers of that great instrument declared that an offense to be impeachable must be a crime, or, what is equivalent to it, a high misdemeanor.

Mr. President, this respondent, being on trial charged with crime, is entitled to every reasonable doubt that may arise upon the evidence

in the case. I do not come here to claim that he needs the application of this rule, for I insist that the evidence in this case shows that he is guiltless beyond a reasonable doubt; but I invoke the attention of the Senate to that beneficent rule of law now because it is the outgrowth of the spirit of liberty and justice so strong in the Anglo-Saxon race. It is the common safeguard and heritage of every American citizen. It is the shield of the accused and is a bulwark for the protection of the liberty and life of every man, woman, and child in the land.

Now, Mr. President, in taking up the various articles of the impeachment, I propose, first, that as to the first seven articles the charges are stale and should not be considered by the Senate. It has been the policy of the Congress of the United States to provide by statute, and it has been the policy of every legislature of every State in the Union to provide by statute, that a definite limitation shall be fixed upon the prosecution of a man for crime. Under the statutes of the United States, if I am not mistaken, with the single exception of a prosecution for treason or murder, no man can be brought to the bar of justice unless the indictment be returned against him within three years from the date of the commission of the offense. That is a wise and beneficent policy of the law, safeguarding the rights of men and amply providing for the interests of all the people.

I do not stand here to insist that as a matter of law the limitation statutes of the United States apply in an impeachment case any more than I would insist that the statutes of limitations of the several States in regard to civil actions apply in courts of equity as against the prosecution of equitable claims. But what I do insist is that the same rule should be applied here that the chancellor applies on a bill in equity.

In the chancery courts of our country it has been universally held that the court will not consider a claim that is stale, and by stale they mean one that has laid so long without any attempt to enforce it that it ought not to be enforced, and in almost every instance the equity courts have declared that a claim was stale in equity when if it had been a claim at law the statutes of limitation had run against it. Almost without exception the courts of equity have thrown out from their portals every claim of an equitable character that has not been presented there within the time prescribed by the wisdom of the people within which men should prosecute their actions at law.

So I say now that it is contrary to the policy of this Government, as declared by its legislation for years, that a man shall be tried even in a high court of impeachment for crime unless the impeachment, as must an indictment in the courts, be brought against him within the limitations fixed for the prosecution of crimes by the statutes of the United States.

I say it is wrong to this defendant, it is wrong to the people of this country, that these old, stale charges should be here revived, that the dead past may not be permitted to hold its buried dead, and it is not the policy of our great civilization to resurrect from buried tombs old charges with which to persecute and prosecute our citizens.

Mr. Manager OLMSTED. Mr. President, may I, through you, venture to interrupt the learned counsel to call—

Mr. THURSTON. Mr. President, I prefer that I may not be interrupted in this discussion.

Mr. Manager OLMSTED. I shall not interrupt except to say—

Mr. THURSTON. If the learned managers have any reply to make or

any contrary views to present, they will have ample time in the opportunity that is given them in the close.

Mr. Manager OLMSTED. I knew the gentleman did not wish to make a misstatement, and I merely wished to draw his attention to the fact that the offense charged in the third article occurred within two years from this present moment.

Mr. THURSTON. Mr. President, if I have not read the offense charged in the third article correctly (and I take back what I said about not wishing to be interrupted), I am glad to have the manager call my attention to the charge. He is right as to that one charge, and I limit the application of my argument to all of the first seven articles except the third. As to the first charge, it is alleged that he took his fees for mileage and attendance in the year 1897, more than seven years ago.

In the second charge, in January, 1901, more than four years ago, in the celebrated car case, it is alleged that this man should be removed from his office because almost twelve years ago he committed the impropriety of riding a bit about our country in a private car without making compensation. Mr. President, there are public reasons why the mantle of the law of forgetfulness should be generally drawn in the United States against old transactions of that kind.

In the first three articles this respondent is charged with petit larceny in stealing from the United States three certain sums of money that he was not entitled to under the law by use of false certificates. I meet this charge, in the first place, by saying this man's actions were in the light of day. He placed them himself upon the records of the court over his own signature; he furnished the officers of this Government every proof needed to convict him of crime, if crime there were; he exhibited to the marshal of his district, to the judge of that district, who passed upon the marshal's accounts, to the Department of Justice, and to the Comptroller of the Treasury his attested declaration that he robbed the United States of these petty sums of money! I ask you to tell me, as thinking men, whether such action is compatible with the idea that in filing these accounts he even for a moment thought he was doing anything wrong? Do such acts as these show him as having a malicious and wicked heart?

Mr. President, that fact alone is proof positive that this judge of the court in certifying as he did must have believed that he was entitled to the money. Thieves do not steal in the daylight when people are gathered about; they do not put the proof of their crime upon the records of the court or in the archives of the Government; they do not leave it open to the officers of the law to prosecute them upon their own admission. In that action the man's soul, as proven by the open way in which he certified, was as pure as pure could be.

Whatever you may say about the construction of this law, whether you determine he was right or wrong in his construction of the law, you must acquit him of any deliberate or intentional purpose to commit a crime or to defraud the Treasury of the United States. But, Mr. President, I go a little further. I might demur to the evidence as to these charges on the expense account.

The managers have proven that on three different occasions this man certified to an expense account at the rate of \$10 per day; they have proven that on those occasions he could not have expended more than a certain sum in riding to and from the different places; they have

shown that he actually paid certain sums of money for board and lodging; but they have not attempted to prove that he may not have expended every dollar of this \$10 per day in some legitimate and proper manner as his expenses.

Who is to judge of what are expenses under this law of Congress? Does the circuit judge of the United States, who goes to one of our cities to hold the circuit court of appeals thereof, and takes his wife or other members of his family with him, violate this law if he charges as a part of his expenses the keep of his wife or other members of his family? Does this law intend to drive a man away from the comforts of his home and the companionship of those who are dear to him?

If this man, being a chronic invalid—if any judge, being a chronic invalid—holding court away from home, is compelled to call in a physician day by day, or to run bills at a drug store, is that a legitimate expense? Who says “nay?” There are many kinds of expenses that this man might have incurred; and yet I do not care to stand upon this perhaps technical objection that the charges are not proven, for, Mr. President, under any construction of this law that can be placed upon it, every Federal judge in the United States is entitled to an allowance not exceeding \$10 a day for every day in the year during which he holds court outside of his own district.

Not \$10 per day at each place he goes to, but in the narrowest limitation of the provision he is certainly entitled to \$10 per day for the fiscal year, grouping together every place where he has held court; and if he goes to one place for three or four days and incurs expenses greatly exceeding \$10 per day, under that statute he is entitled to make that up by charging more than he expends at the next place he goes to, if at the end of the fiscal year he has expended at all his places of attending court no more than is provided under the statute.

You can place no other construction upon that law. Where is the proof? What witness swears that this man, holding court for probably two hundred days in the year at New Orleans, at Atlanta, and at other places in the South, received more money for expenses than he had paid out? Where is the proof that at the end of any one fiscal year he has certified to and drawn from the Government of the United States more than \$10 a day for the days he had been absent in holding court outside of his district?

But, Mr. President, Congress, I think, in unmistakable terms, has placed its own construction upon this section of the statute. Under section 596 of the Revised Statutes of the United States it was provided that district judges holding court outside their districts should not receive any compensation for their expenses other than their salaries. That provision remained in force down to 1881, when it was repealed.

In the repealing act there was no specific provision authorizing the payment of expenses to these district judges, but by the ruling of the Treasury Department it was decided that after the repealing act of 1881 judges were entitled to receive their actual expenses, moneys expended, and under that ruling regulations were provided whereby they could get their expenses upon furnishing certificates and receipts of the actual amounts expended.

Mr. President, if it had remained the purpose of the Congress of the United States to limit those expenses to actual moneys expended there

was no need at any time thereafter to change the law or to enact any affirmative legislation. If Congress intended to limit the compensation for expenses of travel and attendance to sums actually paid out, there was no need of affirmative and new legislation; and yet in 1896 a law was passed specifically giving to the district judges of the United States a sum "not exceeding \$10 a day for their reasonable expenses for travel and attendance while holding court."

This word "attendance" for the first time crept into statutes of this sort under the act of 1891, creating the circuit court of appeals; and the provision of 1896, relating to district judges, was an exact copy of the act of 1891. And for the first time in any law that ever provided for expenses of judicial officers, or civil officers, or agents, or special commissioners, that word "attendance" was put into the statute. What does it mean?

I insist it means what this judge thought it meant, what I believe many of the judges of the United States thought it meant, what I believe many of the Senators on this floor still think it means, and what I do believe it means—that is, that Congress intended that for travel and attendance a man should be entitled to such sum as he himself thought was right and just under the circumstances of each case, provided it did not exceed \$10 per day.

There was one reason why this law of 1896 was passed, and that was because an examination of the Treasury accounts showed that all over the country, under a law which did not limit the amount of expenses, our district judges holding courts outside of their districts greatly exceeded, on the average, \$10 per day, and the statute was passed to limit the expenditure to \$10 per day—not to limit it to that sum at any one place, or even to the actual sum of money paid out.

Why, sirs, it was intended by this august tribunal when it enacted this legislation that some discretion should be left to a judge of the United States away from home; that it should be left for him to determine as to whether or not he should be extravagant in his living; it was left for him to determine whether or not he should take his wife with him; it was left for him to determine the character of dinners he should eat or the wine, if any, he should drink, or at least the apollinaris water he might take in.

Mr. President, that statute is certainly ambiguous in its meaning, and must be so held. If it be ambiguous in its meaning, where is a lawyer on all God's footstool who will insist that a man who construes it one way or the other way is guilty of a wicked or malicious purpose in the doing of it? Why do I say it is "ambiguous?" This Senate had it under consideration at one time and acted with respect thereto. I call the attention of the Senate to the record made by this body April 24, 1896, page 4363 of the Congressional Record, volume 28, part 5. It is found on page 547 of the record in this case.

Mr. Allen, who was then my colleague on this floor, rose and said:

Mr. President, I desire to call the attention of the Senator from Iowa to a fact which came to my knowledge the other day, and it is to the effect that under this law, or laws similar to this which have been passed, where Congress allows compensation to judges who hold courts outside of their particular districts, and especially the United States appellate judges, that in all instances they certify to \$10 a day, regardless of the actual expenses to which they are put.

Senator Allen in that public way advised the Senate and the country while it had before it and was considering this legislation that it had come to his knowledge as a fact, not as a rumor, that the judges of the

circuit courts of appeal under the act of 1891 were certifying to \$10 expense accounts every day, whether their expenses were so much or not.

If the Congress of the United States desired to limit these expenses to moneys actually paid out, it was put upon notice then and there that it must enact some statute different from the one which applied to the circuit judges of the United States. They were advised then and there that if this law did not mean what we say it did it was for Congress to add another qualifying provision to the proposed statute that would make the meaning and intention of Congress clear.

Mr. Allen further said:

I have information from a source that I am not permitted to disclose that in many instances where the legitimate expenses and hotel bills are not to exceed three or four dollars a day, where a judge has gone to a city and stayed there perhaps for a month or two months. * * * In cases where the judge has gone to a place where the court is to be held and has no expense except the mere expense of hotel bills, remaining there for a month, or, possibly, all winter in some cases, or for several months at least, uniformly he certifies to \$10 a day, which is the full maximum allowed by the law.

That was not a statement that could be disregarded by this Senate if it had another policy to pursue. It was a statement of an actual existing condition of things, made under the oath and upon the honor of a Senator of the United States, and I say—and no manager on the part of the House has the right to challenge the statement—that when the law of 1896 was up for consideration at that very time the circuit judges of the United States in construing a similar law were charging and receiving \$10 a day, the maximum, when their expenses were nowhere equivalent to that amount.

Mr. Gray asked Senator Allen:

Do I understand the Senator to say that all the judges certify to \$10 a day?

Mr. ALLEN. Not all. I do not say all. But I say that there are judges who do it—district judges holding, for instance, courts of appeal. Some of them do certify uniformly to \$10 a day and take \$10 a day out of the Government in cases where their legitimate expenses are not, and in the nature of things can not be, to exceed three or four dollars a day.

Mr. President, I will not read all of this record, but I have read enough to show you that if Congress proposed to limit these expenditures to moneys actually paid out it was advised then and there from the floor of this Senate by a Senator of the United States that they must add some more specific provision to the one which they were proposing to enact. What followed? Mr. Allen then said:

I suggest to the Senator from Iowa the propriety of inserting, after the word "judges," in line 21, on page 111, the words:
"Which said certificate shall in all cases contain a statement that the expenses therein certified have actually been incurred or paid."

And the Senator from Iowa [Mr. Allison] acquiesced in that request, and that amendment went on the bill. What happened? The House, in which distinguished body these great managers form so representative a part, disagreed to that amendment. The Senate undertook to limit the payment of expenses to expenses actually incurred. The House refused to agree to that amendment and sent the bill to conference. What happened there? On the consideration of that amendment the conferees of both Houses reported as follows:

Amendment No. 177: That the House recede from its disagreement to the amendment of the Senate No. 177—

That was this amendment—

and agree to the same with an amendment, as follows: In lieu of the matter inserted by said amendment insert the following:

That is, the first thing they did was to strike it out, thereby declaring through both Houses of Congress, already informed of the construction placed upon this law and of the practice of the judges of our courts thereunder, that it was not its policy to limit the judges to moneys actually paid out. In lieu of that limiting clause, they inserted:

“, and such payments—

That means the \$10 payments certified by the judges without bills of particulars—

shall be allowed the marshal in the settlement of his accounts with the United States;” and the Senate agree to the same.

Thereby they not only approved the practices of these judges and their construction of the law, as known to them and declared in this body to them, but they went still further and put on an amendment making it compulsory on the Judge to approve the marshal's accounts where he paid this \$10 a day, knowing, as he must, that it had not been expended.

Mr. President, there was also a consideration of this matter and a discussion about it in the House of Representatives, which may be found in the record of this case, commencing on the bottom of page 548 and continuing down for a page or two. I have no time here to read any portion of those proceedings, but I wish to call your attention to the fact that they were like those in the Senate in 1896, and in those proceedings in the House this whole question was gone over as to what the practices of the judges of our country were in certifying to their expense accounts.

It was thoroughly ventilated, and, as a result of it, everybody in both Houses of Congress knew what was being done. From the record of this case, on page 552, it will be seen that at the session of Congress of January 27, 1903, when the House had under consideration the judicial salary bill, proposing to give the judges both increased pay and expenses, the matter was under discussion, and it resulted in the offering of the following amendment:

That it shall be unlawful for any of the judges of the United States courts to accept or receive any gifts, free transportation, or frank from any corporation or person engaged in operating any railroad, steamboat line, express or telegraph company. Any violation of this provision shall be punished by a fine not less than \$100 and not exceeding \$5,000.

* * * * *

The yeas and nays were ordered; the question was taken, and there were—yeas 87, nays 114, and I believe Mr. Manager Olmsted was in charge of the bill at the time that amendment was voted down.

I shall have something to say upon that with respect to another article of this impeachment. But, Mr. President, it is folly to say that in towns like Tyler and Waco the marshal who paid the \$10 per day, the judge who passed upon the accounts, the officers of the Department of Justice, and the officers of the Treasury Department did not know that in the very nature of things the real expenses paid in most cases, at least, could not reach the sum of \$10 a day, especially when the judges were sitting for any length of time.

I insist that knowledge was in possession of the marshal, of the judge, of the two Departments, of the Senate, of the House, yea, of the Government itself, that this construction was being placed on the law all over this land; and I insist that that spirit of justice inherent in the hearts of all good men to the effect that no one ewe lamb shall be singled from the flock for slaughter applies in this case.

Mr. President, Charles Swayne knew every time he signed a certificate that the marshal knew, for he must have known, being there and knowing the local conditions, whether those actual expenses had been incurred. The marshal knew and the judge of that district must also have known whether that certificate represented money actually paid out.

The respondent knew that the Department of Justice, with its unnumbered special agents going up and down this land, as they should go, to ferret out crime and to prevent frauds upon the Government, knew every time they looked at one of these certificates from Tyler, Tex., or from Des Moines, Iowa, or from any other of the ordinary sized cities of the country—perhaps I am doing an injustice to Des Moines—that a certificate for \$10 a day meant something more than the mere recovery of moneys paid out.

The respondent did all this in the light of day, before the world, fearlessly. If he had not honestly believed that he was right, would he in a single instance have dared to defraud the Government in this small way, thereby taking the chances of the penitentiary or of impeachment? The very statement of the case renders its answer sure, and on it we confidently appeal to the judgment of the Senate, both to the judgment of its lawyers and the judgment of its business men of affairs.

Mr. President, as to the fourth and fifth articles of impeachment I shall have but little to say. As I have already urged, the claim is stale. It is covered up with the dust of the years. It has been resurrected by the hands of ghouls digging into the past to throw discredit upon this man, whom they did not like. He once rode from Guyencourt to Jacksonville, Fla., with three or four members of his family, on a private car. Mr. President and Senators, let me ask you, is there one word of testimony in this case that Charles Swayne demanded the use of that car or that it was ever sent to Guyencourt by his request?

The receiver of that railroad, knowing the Judge was at Guyencourt, and that it was about time when he would go to Florida, sent the car to him without any request from the Judge, as the testimony shows, and as an act of courtesy and of compliment. He sent it there without expense to the railroad or to the receiver. Not a man went with it who was not a salaried monthly employee. It was not necessary during those few days for the railroad to employ an additional man or to pay for one day's more work than it would if the car had not gone. Its transportation was provided for through the ordinary courtesy of connecting lines and cost the railroad and its receiver not one dime.

But they say this man should be impeached because he and his family took unto themselves and into themselves four square meals without compensation. I suppose the honorable managers would impeach this man because at the end of every meal on that car he did not walk up, as he would have done at the eating house at the station, and plank down 50 cents per head.

He also went to California in a car of the same railroad company, but you only know it because he admitted it in the answer. They have introduced no evidence except to show the bare statement he once made that he had been to California in that car. All this was in 1893. You must take our answer with respect to the California trip as the proof and as the truth, and in that we allege that not one dollar of expense attached to the railroad company or its receiver from that trip. It was tendered to the Judge as a matter of compliment, and as such was accepted by him.

Mr. President, I do not stand here in the light of modern sentiment to claim that at the present time it would not be better for the judge or any other public officer in the land to refuse favors from the great transportation lines of the country. Public sentiment has so far ripened that to-day the great body of our people politic do not look with favor upon the acceptance of these courtesies by those who represent them in various official capacities.

But I ask you to turn back twelve years, when that sentiment was almost in its infancy and the acceptance of favors from the railroad companies of this country was almost universal on the part of public officials. No public official in the land, on the bench, or anywhere else ever thought, nor did his people, that his judicial or official action would be hampered or impeded or influenced thereby.

I am not here to stand for the absolute propriety of any man upon the bench accepting courtesies from railroad companies, but I am also here in the discharge of my duty to say to you that the acceptance of a ride in a private car without expense to the railroad company is no different from the acceptance of a pass to ride from Washington to Baltimore without expense to the railroad company or to the man who uses it. The only difference is in degree. If one be an offense, both are offenses. I sincerely trust, no matter how seriously it may affect me personally, that the day is soon to come when all services rendered by railroad companies will be paid for equally by all.

But, Mr. President, to say that this transaction, which never entered into the mind of this man other than as a mere matter of compliment to him, which involved the railroad in no expense whatever, unless it may have been a few paltry dollars for meals upon one occasion—to say that that dead and forgotten transaction of twelve years ago is a ground for the impeachment of him for high crimes and misdemeanors is to make the suggestion laughable in the eyes of the world.

Mr. President, it is charged that Charles Swayne did not reside in his district, in accordance with the provisions of the statutes of the United States. He was appointed a Federal judge, as I now recollect, in 1889. He set up his residence at the time of his appointment in St. Augustine, Fla., then in his district. He established his household gods. He laid the family altar. He brought there his family. He planted his vine and his fig tree in the expectation and hope that there he might abide until the shadows came. He did it honestly and in good faith. It was no fault of this respondent that he did not continue to reside in St. Augustine, Fla.

Mr. President, I will not in this argument refer to any conditions that existed in that State to which I ought not to refer. But it is shown by a consideration of all the evidence and the circumstances of this case that in some way or other prior to 1894 there had been aroused against Charles Swayne, the judge, some sort of feeling or

prejudice in the northern district of Florida. At the time of his appointment Florida was about fairly divided in territory and business between the northern and the southern districts. But something occurred—I know not what. It may have been because that community felt, as I think perhaps any other community, North or South, East or West, might have felt, that he had been in the State too short a time to supplant some one of the older members of the bar in the nomination and appointment to the highest judicial office among them.

But whatever it was, the movement against him proceeded until it terminated in what? Finding that he was there for life, that he could not be removed, they cut his district in two, more than in the middle. They took from it almost all its territory where was the business of the district and the court and attached it to the southern district of Florida, leaving in the northern district only what might be termed the northwest corner of the State, a part of the State where very little business was to be expected.

That this legislation of 1894 was a direct attack from some source and for some purpose against this judge no man can possibly deny. What followed? By that act he was driven from his home. He was uprooted in his household affairs. The shelter that he had provided for his declining years was denied him. He was compelled to go out once more in the world and seek another habitation. He was not a wealthy man. He could not, like some could, establish residences and buy houses ad libitum in different parts of the country. He was called upon to sacrifice, I have no doubt, very much that he had invested in that home. In any event, he was driven out from its peace and from its comfort and under the law compelled to go into the confines of his new district.

What did he do? What would you have done? As the testimony shows, his stress was such that he was compelled, as he did, to scatter his family over the face of the earth. He had no new hencoop to which to call his chickens; and so, from that happy home, that expected home of his old age, he went out into the wilderness of the new district.

Mr. President, it is true that he never gathered his chickens into another coop until the year 1900. It is true that he never set up another family altar until then. It is true that his household goods were scattered; his furniture in storage; his old home occupied by strangers; his wife and his children here and there. But, sir, do you mean to tell me that that man had and could have had no legal residence anywhere because of this condition of things? When he broke up his house, when he stored his household effects, when he sent his wife and children off to roam and to visit about the country, this man could and did establish a residence by going to Pensacola, declaring his purpose to make that his residence, and continuing in that purpose all the time down to 1900, when that legal residence blossomed into a real residence and home once more.

During all this time, there being but little business in his district, he was called upon by the circuit judges of that great circuit to hold court all over the South, and for at least a hundred and fifty or two hundred days per year he held court all over the South in the court of appeals circuit and in the other districts of the fifth judicial circuit.

Let it be said to his honor and his credit that never from a lawyer, never from a client, never from the judges who called him into their

associate service, never from the public, has the least criticism been passed upon his judicial actions, on his judicial honor, on his judicial ability, in any other district than the district where unfortunate circumstances have combined to raise up against him those full of bitterness and hate, who propose to pursue him out of Florida or into the grave.

But it is gravely asserted that he did not register and vote. What Republican would care to register and vote in Florida? Or what Democrat would care to do the same in Vermont? He was not a politician. Elections passed him by. It is doubtful whether, if he had been in any other State, he would have taken the time to register and then to go to the polls to vote.

But they say he did not pay any poll tax. A monstrous charge! Nature placed him beyond the reach of a poll tax in Florida on his birthday in 1897. Born in 1842, when he became 55 years of age the laws of Florida imposed no poll tax upon him.

Senators, I will discuss this charge but a little more, and only to say the evidence shows that unless he had a legal residence in Pensacola he had none upon the earth, and was a mere flotsam and jetsam on the tide of time, without a shore upon which to land or a support to which to cling.

And now I come to the consideration of the Davis and Belden contempt cases, and I say with all deliberation, with all honesty, that the persecution of this man for his judicial acts in the Davis and Belden case is, from my standpoint, not only unjustified, but it is monstrous. They have tried to bolster up the Davis and Belden case by appealing to you for that old man who they say was one of the founders and the saints of the Republican party in the South.

The Republican party has had too many saints in the South for its own welfare or the welfare of the South; and sometimes I have wondered, when I hear a man spoken of as one of the old leaders in Louisiana, where the Warmouth and other contending factions were tearing the Republican party into bits, destroying the possibility of its future, whether it was an act of honor to have been a saint of the Republican party in Louisiana during those times.

Davis and Belden conspired against the dignity and the authority of the court just as surely as Wilkes Booth and others conspired against the life of President Lincoln. Conspirators do not meet in the light. They do not gather in the eyes of men. They do not mark their plans upon their sleeves, that men may read them. They go about by stealth. They seek the darkness of the night. They come together as little as they can. They pass their plans along the line, and they prevent, as far as possible, any proof of their conspiracy. Conspiracy can not be proven by direct evidence unless some man turns informer. It is only by the careful piecing together of circumstances that conspiracy has ever been shown, and yet circumstances that bear no other construction than their relation to each other are stronger proofs than the testimony of witnesses to facts, because witnesses may lie; circumstances generally do not.

Mr. President, years ago a great engineer proposed to carry a wire across the chasm below Niagara Falls that it might bear up a bridge over which could pass the commerce of the country. There were those who laughed him down, or tried to do so. They said no wire

could be made strong enough to bear up this mighty structure. He strung one wire thread across the abyss that almost broke of its own weight and would not have held up a single pound more. Then he stretched another thread of wire along its side and then another and another until they all had crossed. Then he wove them together with the engineer's skill until each one was enwrapped in the other, and the weakness of each single strand, as if by magic, became the mighty strength of the whole, and the structure was built across which the giant locomotives that bear the commerce of the world still pass in safety.

So when you come to prove conspiracy you must take it up by threads, this one and the other one, one at a time. One thread may show but little, but when they are brought together and woven along the lines of reason and of logic they show the strength of proof itself.

So, Mr. President, there was pending in the circuit court of Florida in November, 1901, a suit known as the "Florida McGuire case." The family of suits from which that had descended had vexed the courts and the people there for many years. They had been brought before different judges and tried in different tribunals, and, as Mr. Blount said to you, all of them had resulted in the defeat of the plaintiff. But another child in this family of litigation was born in the Florida McGuire suit. It was pending, and for some reason or other Paquet and Belden did not wish to try it before Judge Swayne. I do not care what their reason may have been; I do not care what their motive was; I state it as the groundwork of my argument on this question of conspiracy that they did not want him to try that case.

In August, 1901, Paquet sent him a letter telling him he understood he had become interested in a piece of the property involved, and asking him to recuse himself. That was not an application made to the court or in the court. There is only one place to make an application of that kind, and that is in open court, where attorneys for both sides are present and where all the world knows what goes on.

Judge Swayne did not reply. He went to Pensacola to attend court. He opened court on the 5th day of November. Judge Paquet was there, the leading counsel in the case. It may or may not be true that Belden was there. It probably is true that Davis was not there. But Judge Swayne then and there from the bench made that statement, as clear as the words of living man could have made it, in the presence of the assembled lawyers and spectators. It was made at the opening of the court. It was made in public. There was no doubt as to what he stated at that time.

Do you doubt that a knowledge of what he said was conveyed to Judge Belden by Paquet, his associate in that case, the moment Belden reached the town? Do you believe for an instant that that same knowledge did not go to Davis when he was with those men consulting and apparently acting as their associate from day to day? It is beyond the bounds of human reason, judging those transactions by what we know of the general impulses of mankind, to believe for an instant that Belden and Davis did not know of the full and specific statement that had been made by Judge Swayne from the bench. Later in the week he repeated that statement when Belden was there and when some of the witnesses say that Davis was there.

So, Senators, before that case was called for trial on the afternoon

of November 9 it is proved, if men's judgment accept proof that is irresistible in logic, that Davis and Belden, as well as Paquet, knew what Judge Swayne had stated from the bench.

And what did he state? I ask you, Senators, what did he state? It had been suggested to him that he had some interest in a piece of the property involved in the litigation. He said I have not, I never have had. I am not quoting his language, but the effect of what he said, clear and unmistakable, was, I have no interest; I never have had. He might have stopped there; but, like the open, honest man he was, he went on. He said, "A member of my family did enter upon negotiations for that property."

I ask you to take notice of that word "negotiations," for Mr. Blount says that was the word he used. Mr. Marsh swears that was the word he used. He did not say that a relative of his bought the property, but that a relative of his had been in negotiation for it. He did not say the relative had bought the property. There was no contract outstanding at any time. He said that when the deed was presented by the grantor he discovered it was a quitclaim deed and he refused to accept it and had the deed returned.

Title never passed, the deed was never exchanged, no money was ever paid. No person on earth claims, or can claim, that Judge Swayne or Judge Swayne's wife ever had, for a single instant of time, an interest in that property of any kind whatever.

And, Senators, those three lawyers knew that was true. The records of that county were there for them to search the whole livelong week. There was not a line upon it showing title in Charles Swayne or in any member of his family. The title there appeared to be in one Edgar. Not only that, but they knew the real estate firm that had conducted that negotiation. They only needed to have gone across the street to have had there a complete answer made and the information given them.

Did they do it? No. They knew, they ought to have known, they must have known, that Judge Swayne or his wife or his relative never had any interest in that property; that he was as free to enter upon the trial of that case as any other judge in the United States would have been. They never questioned it in that court at that time.

What happened? After Judge Swayne had refused to recuse himself, after he had made this statement from the bench showing he had no interest in the property through himself or others of his family, they filed a dismissal of their plea to the answer putting the case at issue. They noticed the case for trial. They were consulting together with Mr. Blount all through the week in open court as to the forthcoming trial of the case, leaving Blount to understand from day to day that they would be ready for the trial when the trial might be reached.

Blount acted on this information. He sent for one of the public officers at a distant town, he subpoenaed his witnesses, he took the ordinary precaution that a lawyer takes to be ready for trial when the trial is reached. All through the week Paquet and Davis and Belden as a trio were sticking together apparently for one single interest, for there was nothing else before that court, unless it was the McGuire case, in which they were all interested.

They were sitting together in the court, consulting together; all were present when discussions were entered into with Mr. Blount as

to the probable time when the case would be reached. All that week these men were there expecting to go to trial.

Not only that, but as showing their full knowledge of what Judge Swayne had said and the attitude he had taken, during that week these men, or some of them, sent to Judge Pardee at New Orleans either a letter or telegram, as was testified to in answer to my question, and Judge Pardee in answer to that sent back a telegram telling them to go on and make up the record and preserve their rights upon an appeal. You can only judge from that that they had written or telegraphed Judge Pardee asking him to come there or send some other man there and try that case. But these three men were there acting together.

Do you deny either the honor, the truth, or the judgment of that man Blount, one of the greatest lawyers of that great southern land which has been the birthplace and the home of great lawyers and of great statesmen in all the years of the nation's life? Standing here, preeminent in his profession, a man whose character is unsullied and beyond reproach, he told you of the connection that there was between these three men in that court during that week; how they were consulting together. Davis comes in and says: "I was not employed; I was not retained until long afterwards."

And that is perhaps true. He may never have been employed in that case. He may never have been retained. But at least as a lawyer without any business in that court he was evidently trying to break into the case by assisting the lawyers who were already there. It makes no difference whether he was a lawyer in that case or not, all three of these men were officers of the court, bound under their duty and by every rule of propriety and decency and professional regard to maintain the court, to assist it, not to thwart it in the carrying on of its judicial business.

On Saturday afternoon the criminal docket was concluded. The lawyers on both sides of that case had expected it would be concluded that day. They had been watching it every day. They knew that it was not only the rule but that it was the announcement of the Judge at that term of court that the civil docket would be called immediately upon the conclusion of the criminal docket. It was their duty to get ready for trial. Yet they never made a move. They never asked for a subpoena. They never took a single step to assemble their witnesses and have them on hand until Saturday evening came. Then, when their case was called for trial, they asked for a postponement.

The Judge, as Mr. Blount has so well told you, in a fair and impartial manner, said: "Why, certainly, I have no objection to setting this case for next Thursday if the lawyers on the other side do not object." But they did object, as it was their right to do, and what was Judge Swayne's harsh and oppressive action? He said, "Gentlemen, I will call this case for trial on Monday morning. It will then be tried unless good cause is shown for its continuance or postponement." If the lawyers had had any good cause to show they might have shown it on Monday morning. But they had none.

And, Senators, this pretense that they did not go to trial on Monday morning because they did not have time to get their witnesses is a sham and an evasion—yea, and a falsehood.

Judge Belden, when testifying in Florida, said that they did not go to trial because they did not have time to get their witnesses. He said

they had forty or fifty witnesses, many of them living at a distance. He admitted on this witness stand that he so swore. And yet when the resurrected case, or the reincarnated case, of Florida McGuire came on for trial the next spring—the same case, the same issues, the same necessity for witnesses—they subpoenaed only twelve witnesses, every one of them living within half a mile of the court-house; and on the trial they only swore and examined sixteen, all of them living and being within half a mile of the court-house.

Judge Belden said on this witness stand, in answer to my question, that that was the only reason they did not go to trial with that case on the following Monday morning. That statement is an evasion and can not be true. The clerk swore he could have gotten out subpoenas for all those witnesses they thereafter had inside of fifteen or twenty minutes; the marshal swore that he could have served them all in an hour; and every witness they had or knew of on the face of God's wide world they could have had there at the opening of the court on Monday morning before they were asked to swear or examine a single one. It is a mere excuse to fortify their denial that they conspired against the dignity and authority of that court.

What happened when they went out of court that Saturday night? Born in the mind of some one was the idea of placing the Judge in an unjudicial position before the bar and the community. Do not tell me that those men went from that court room and assembled in the back room of a store—the last place on earth to transact legal business and prepare papers—do not tell me, any of you who are lawyers, that they just went there for the honest purpose of hurrying Charles Swayne into the State court before he could get out of town and escape their service. It is a fabrication that does not stand any test. It is a falsity that has been made up for the purpose of attempting to excuse the unprofessional actions of these men. In the back room of the store they got together.

In the watches of the night they got out a præcipe. They sent it by special messenger, one of their nonprofessional fellow-conspirators, to the clerk of the court at his house and aroused him, and there compelled him to go down to the court-house and get out their summons. They also hunted up the sheriff at that late hour of the night and sent him on wings of fire to find Charles Swayne and make him a defendant before the morning light could shine. Why? Out of that same conclave in the back room of Pryor's store at the same time the præcipe for summons went out by one hand the newspaper article formulated and concocted there went out to the printing office by another hand; another fellow-conspirator carried it. These were acts done at the same time. They must have related to the one purpose.

What possible object was there in publishing on Sunday morning in the local paper the fact that Charles Swayne had been sued if their only desire was to bring him into court on the trial of a real lawsuit and a legal issue? Their suit against him was a fabrication. As lawyers they knew he had no interest in that land. As lawyers they knew it was a violation of their oaths to bring him or any other man into court on a false suit. They knew it then; they knew it a little later; they know it still. They were officers of the court. They were under a different obligation from mere outsiders. They come under the provisions of the contempt statute of 1831, for under that law the officer of the court may be prosecuted summarily for con-

tempt, and the acts of these men were not only near to the courthouse, but they were a series of confederated acts, all making one whole and complete act, part of which act was performed in the courthouse in the presence of the court.

I tell you, gentlemen, that at some time on Sunday, when the knowledge reached these three men that contempt proceedings would be taken against them on the opening of the court on Monday morning, they conceived for the first time the purpose of dismissing their suit and disclaiming confederation in the bringing of the suit against Judge Swayne and in the publication of the newspaper article. When they knew on Sunday that they must answer at the bar of the court for the improprieties and offenses they had committed, one of them went away. The other two must stay because they lived there; and for the first time they conceived the idea of going into court on Monday morning and dismissing the Florida McGuire case.

Senators, what happened at that trial for contempt? I will only in a word describe it. Great stress has been laid upon the alleged fact that it was a hurried trial; that but little time was consumed in it; that there was undue haste. How so? The defendants had served upon them a rule to show cause, in which rule was fully set forth in writing the charge against them. They had time to prepare an answer. They did come in with an answer, evasive and unverified by oath. They made no objection to proceeding to trial. They made no objection to the calling of witnesses.

They did not offer themselves as witnesses that they might be examined upon their oaths and cross-examined then and there at the bar of the court to which they must then answer, as to whether or not they had been guilty of conduct unprofessional and involving the dignity of the court. They had a chance to purge themselves then. It was their day in court. They were untrammelled by conditions or restrictions; their plea was in, witnesses were sworn. They might have had the time that was necessary to call all the testimony in the world; but they sat back there under their evasive, unsworn answer, and judgment fell upon them.

You say that the Judge made a mistake because he said "punishment by fine and imprisonment." That has not been an uncommon mistake in the courts of the United States in sentencing prisoners. Our criminal statutes are so varied, so many of them read "fine and imprisonment" and so many "fine or imprisonment," that it has been a somewhat common occurrence that a person convicted has been sentenced for both until the error has been called to the attention of the court by counsel. You say the Judge ought to have known the law. So ought these defendants in the contempt proceedings; and when the Judge sentenced them to both fine and imprisonment it was their duty as lawyers not to keep silent but to speak, to point out the error, and ask to have it corrected, as it would have been done.

Was Judge Swayne harsh and angry in imposing that sentence? Did you listen to that man Blount when, with the correctness of a trained legal mind, the assistance of a remarkable memory, and with the careful attention to the truth that shows him to be both conscientious and just, he related that sentence as it was enunciated from the bench, a sentence dignified and proper, one that could scarcely be duplicated by any judge on the spur of the moment from any bench in the land. It was a judgment given more in sorrow than in anger, in the perform-

ance of a high duty, to maintain the authority and dignity and respect of the courts of the United States.

Talk about the judgment being excessive for such an offense as that which was committed by these officers of the court! Where is there a judge in all this land, defied as Judge Swayne was, who would have let them off with so light a sentence? They were not adequately punished either in consideration of their offense or in consideration of the example that ought to be set to the bar of the United States.

Gentlemen, these things that I have shown to you I have not guessed at from this testimony. They are all as evident when you read the circumstances of that transaction as is the morning sun where no cloud obscures its face. The respondent, Paquet, like an honorable man, came into court and purged himself of contempt. He confessed that he had done wrong, that he had not lived up to his duty as an attorney and an officer of the court, that he had belittled the dignity of the bench and obstructed the administration of justice. Then this just judge, this patient, long-suffering man said: "You are forgiven, and you may go without punishment."

Senators, that case was taken to the circuit court of appeals, where Judge Pardee and his associates heard it on habeas corpus. The opinion there rendered is in this record. It shows that Judge Pardee not only maintained that Judge Swayne had jurisdiction of the subject-matter and of the persons, but that he also had before him a clear case of willful, deliberate contempt by officers of that court of its authority.

What shall I say of the O'Neal case, out of which sprung for the most part all of the work which was done which resulted in the securing of the resolution passed by the Florida legislature? Here was a man, the receiver of a bankrupt estate, an officer of the court, performing his duty, and only his duty, under the law, acting by advice of counsel in the bringing of a suit against the bank of which he himself was a director and a stockholder, set upon, assaulted, stabbed, cut, left almost dead, by the president of that bank, who had come to his office for the purpose of reproaching him and taking him to task for bringing that suit against the bank. Did he also get too much punishment when he had sixty days? Except for the Providence which saved his victim's life and left him only scarred and maimed, he would have expiated that offense upon the gallows.

But it is said that the judge exceeded his authority because that was not a contempt under the statute of 1831. It was an assault upon the officer of the court at the office of the receiver. That bankruptcy court under the law is a court always in session for bankruptcy proceedings, for the filing of papers, the making of orders, and the consideration of accounts. It is a part of the machinery of that United States court. It is a part of the court itself—an integral part of the court, which is always in session.

Do you care to have anybody review the conflicting testimony in that O'Neal case, to say as to whether or not the preponderance of proof is that O'Neal commenced that assault because of his desire to reproach and punish the receiver for bringing suit, or whether that was a quarrel brought on without reference to that purpose? Do you care to have me examine that testimony for the purpose of determining as to which of the two combatants was to blame or was the first offender?

I do not think you do, for, Senators, I appeal to you that both in the Davis and Belden case and in the O'Neal case it was a trial had before the judge in open court, a trial conducted on both sides by able attorneys, where there was no limitation on the right to produce witnesses, no limitation on the right and privilege of argument; and these two cases, in which Judge Swayne had jurisdiction both of the subject-matter and the person, were decided by him judicially, and are not a subject of impeachment unless you can show that in those things he acted of a malicious and malignant heart.

Unless you show his dishonesty or malice in his judicial action he is protected by that shield which the wisdom of our judicial system throws around the bench, for if a man may be questioned for his decision from the bench, even if he be wrong, if for a decision wrongfully given from the bench he may be punished, imprisoned, or removed, our judiciary has no protection.

Mr. President, in these times when the gravest questions of statutory construction, when the gravest questions of constitutional construction, when the gravest questions of law affecting mighty interests are only decided at last in the supreme tribunal of the land by votes of five of the judges against four who dissent, what man is great enough at all times to know, understand, construe, and apply the law as it really should be done? This man claims no greater ability than his associate judges throughout the country, whose decisions in all kinds of cases are reversed and remanded day after day and time after time.

Mr. President, in support of my contention in the O'Neal case I present the opinion of District Judge Jones, rendered in the northern district of Alabama, a judge whose great legal ability and attainments are known to every Senator in this body from that whole section of country. This also was a case brought before him where one of the officers of his court had been assaulted because of his official actions. I will only read the syllabus, and ask to have printed as a part of my remarks the entire opinion, because it is the clearest, the most exhaustive, the most convincing exposition of the law upon this subject that I have ever seen or read. The following is the syllabus:

[Ex parte McLeod. District court, N. D. Alabama, S. D., February 13, 1903.]

1. CONTEMPT—ASSAULT ON OFFICER OF COURT.

As courts can exercise judicial functions only through their judicial officers, an assault upon a judicial officer because he has discharged a judicial duty is necessarily an attack upon the court for what it has done in the administration of justice.

2. SAME.

It is vital to the welfare of society that courts which pass upon the life, liberty, and property of the citizens be free to exercise their reason and conscience unawed by fear or violence; and the highest considerations of the public good demand that the courts protect their officers against revenges induced in consequence of the performance of their duties, as well as violence while engaged in the actual discharge of duty.

3. SAME.

It is a high contempt of court to seek to punish a judicial officer for his official acts elsewhere than before a constituted tribunal of impeachment, and the offense culminates in its malignity toward the court when its officer is assaulted for judicial acts by one who has been arraigned before him.

4. SAME—WHAT CONSTITUTES.

An assault upon a United States commissioner because of past discharge of duty is a contempt of the authority of the court, whose officer the commissioner is, in the administration of criminal laws, although no proceeding against the offender was then pending, and the commissioner was not at the time in the performance of any duty.

5. SAME—POWER TO PUNISH.

Legislation on this subject reviewed. Section 725 of the Revised Statutes of the United States (U. S. Comp. St., 1901, p. 583) held to take away the common-law power of Federal courts to punish criticism of judicial acts, or publications which amount to no more than libels upon their officers, but not to deprive those courts of the power to punish summarily, as for a contempt, an assault upon a court officer while yet in office, induced by his performance of duty in a past case.

6. SAME.

Courts will punish contempts of their authority only when the ends of justice will be best subserved thereby.

(Syllabus by the court.)

I ask to have the entire opinion inserted as part of my remarks.

The opinion referred to is as follows:

ON RULE TO SHOW CAUSE AGAINST PUNISHMENT FOR CONTEMPT.

A. N. McLeod was indicted on the 15th of March, 1902, under section 5399 of the Revised Statutes (U. S. Comp. St., 1901, p. 3656). The indictment charged, in substance, that McLeod, after examination, upon a charge of violating section 5440 of the Revised Statutes (U. S. Comp. St., 1901, p. 3676), before Commissioner Randolph, was on the 20th day of June, 1900, held to answer before the next circuit and district courts of the United States for this division and district, and that on the 30th day of October, 1900, McLeod, "well knowing that Randolph was such commissioner," etc., "went upon the highway and unlawfully did threaten and assault the said G. B. Randolph, the said officer as aforesaid, for the reason that the said Randolph, as such officer, had required the said McLeod to execute bond for his appearance," etc. The next sitting of the grand jury after the assault was on the first Monday in March, 1901. It adjourned without taking action. This indictment was found a year afterwards and more than sixteen months after the assault.

The case came on for trial at the September term, 1902, when the defendant interposed demurrers on the ground that the offense charged was not indictable under the laws of the United States. During the argument the district attorney stated that if the demurrers were sustained he would ask a rule requiring the defendant to show cause why he should not be punished for contempt, and the court replied that it would determine in that event whether the offense charged constituted a contempt. The demurrers having been sustained (*United States v. McLeod*, C. C., 119 Fed., 416), the court announced its conclusion as to the contempt feature at a subsequent day of the term.

Thomas R. Roulhac, United States district attorney for United States.

Knox, Blackman & Acker opposed.

JONES, District Judge (after stating the facts as above). The evil example of the offender and the improper inferences the lawless may draw from the inability to punish him by indictment make it a duty to inquire whether the assault upon the commissioner because of past discharge of duty constitutes a contempt of the authority of the court, which should be punished to prevent a repetition of such offenses in the future. A right understanding of the things which lie at the root of this matter is so vital to the good of society that full discussion can not be out of place.

Civilized society abhors the arbitrament of private or interested force. It sets up its own tribunals to determine whether there is any reason for exerting the forces of society in the settlement of disputes, and if so, in whose favor and to what extent. The reason and conscience of officers called "judges" wield and direct the awful power of administering justice, which in so many ways controls the destinies of men. Violence to punish the free exercise of the reason and conscience of such tribunals is a blow at all order and strikes at the very existence of justice. Separated from its officers the court "is invisible, intangible, and exists only in contemplation of law." It "lives and moves and has its being" only in the acts and personality of living men.

The ideal thing called the "court" is beyond the reach of force or fear or fraud. Bearing in mind what the court is and how it is constituted, it is unreasonable in the extreme, in seeking the principle for ascertaining and preventing obstructions to the justice, the tribunal administers, to insist that this legal abstraction, which can neither breathe nor stir save in the bodies of living men, can be dissevered, for any practical purpose, in a matter of this kind from the only personality in which it can exist as a living force.

What reasoning being can deny that assaults upon court officers, because they discharge or have discharged their duty, are subversive of the independence of court and destructive of authority and usefulness? Why are officers protected, if not to

safeguard the administration of justice? There is generally no reason for protecting an officer as to the discharge of duty which does not apply with equal force as well after it is done as while it is being performed. What a man fears may happen to him in the future because of doing his duty, if contemplated at the time the duty is being considered, may, and generally does, influence the discharge of that duty. The desire for vengeance frequently arises only after the duty is performed, because of its performance, creating greater need for protection to the officer than while he is executing the duty.

In divine and human laws the effective means relied on to restrain the acts of men is to hold up before their eyes the consequences which may result from their acts. Will the ordinary officer discharge his duty fearlessly and unawed against the powerful, the vicious, and the desperate, when he knows that the moment the duty is done the power he serves will withdraw its protection and leave him naked to the vengeance his act arouses? Will the lawbreaker dread to give loose rein to his passion when he feels that the court can not or will not punish assaults upon its officers because of past discharge of duty?

So firmly is recognition of the truth embedded in our jurisprudence that officers should be protected from improper consequences of discharge of duty that it has always shielded judicial officers, on the highest considerations of the public good, from being called in question in civil actions for things done in a judicial capacity, even when corruptly performed. (*Hamilton v. Williams*, 26 Ala., 529; *Busteed v. Parsons*, 54 Ala., 403, 25 Am. Rep., 688.) The reason is nowhere as well stated as by Chief Justice Kent in the memorable case of *Yates v. Lansing* (5 Johns, 282), where he says:

"Whenever we subject the established courts of the land to the degradation of private prosecution we subdue their independence and destroy their authority. Instead of being venerable before the public they become contemptible, and we thereby embolden the licentious to trample upon everything sacred in society and to overturn those institutions which have heretofore been deemed the best guardians of civil liberty."

Greater still must be the sweep of the evil if judicial officers can, with impunity, be subjected without resort to any court to responsibility for judicial acts and punished therefore by private vengeance, administered by persons who in the past have come in harsh contact with their power. Who would have any respect for the authority of a court whose judge the moment he left the court-house could be subjected, with impunity, to insult and assault because of acts done in his judicial capacity while on the bench?

Is it in the power of any person, by insulting or assaulting the judge because of official acts, if only the assailant restrains his passion until the judge leaves the court building, to compel the judge to forfeit either his own self-respect and the regard of the people by tame submission to the indignity, or else set in his own person the evil example of punishing the insult by taking the law into his own hands? If he forbear for the time and resort to the criminal law the remedy is hardly better than the wrong, since then he must become a private prosecutor in some other court and depend on it to vindicate the independence of his own court.

Unless the court whose officer he is can and will punish such conduct and acts toward the person of the judge, when past discharge of duty is the motive for the indignity, the judge must submit to some of these alternatives; and any of them degrade his office and bring administration of justice into scandal. No high-minded, manly man would hold judicial office under such conditions. Justice would depend not alone on the learning and integrity of the judge. His ability and will to fight unto death, even in a street brawl, would be equally, if not more, important. Are not these things of grave concern to the court, which can exercise its functions of administering justice only through the judge who is thus badgered, assaulted, and intimidated because of judicial acts?

When the duty and power of the court to deal with such evils are considered in the light of principle and reason, the real question is not where the indignity occurred, but whether it related to the discharge of duty and has the evil consequences in the administration of justice to which we have adverted. If these results follow it is not at all material, so long as the judge is assailed for official acts, where the judge is at the time of the assault, nor whether he is then engaged in the discharge of any duty, nor whether the court is then sitting, nor whether the assault was with reference to a past, instead of a pending case. These things are not of the essence of the offense and evil. Viewing the offense on principle, the sitting of the court is material only in determining when its power can be put in motion against the offender.

The evil is that the judge has been held to accountability for his judicial acts and punished, contrary to the law, because he has performed them. That acts like this, which degrade the judicial office, unfit judicial officers for calm deliberation, awe

them in the exercise of their functions, and undermine their independence, must recoil fearfully on the orderly and decent administration of justice, can not be denied. It is therefore a high contempt of court for anyone to seek to punish the judge for his judicial acts elsewhere than before a constituted tribunal of impeachment. The offense culminates in its malignity toward the court when the judge is actually punished for judicial acts by personal violence at the hands of one who has been arraigned before him.

After diligent search no reported case has been found in this country which covers the precise question here involved. There is a very learned and thorough discussion, to which little can be added, of the general principles which govern cases of this sort by the general court of Virginia in *Commonwealth v. Dandridge*, 2 Va. Cas., 408. That case and this differ, however, in some important features. There, the judge was insulted about a suit against Dandridge's surety, which was still pending before the court. The hour had arrived for its sitting, and the judge was on his way to the court room, and near there, to take his place on the bench, when Dandridge denounced him for past conduct in the case at a former term.

Here no proceeding whatever in which McLeod was interested was pending, either before the commissioner or the circuit or district court, at the time McLeod assaulted the commissioner. The latter was not then in the discharge of any duty, as was the judge in the Virginia court. (In *re Neagle*, 135 U. S., 1; 10 Sup. Ct., 658; 34 L. Ed., 55.) In Dandridge's case there was insult only by words and manner. Here there was an attempt to do personal violence. Judge Dade, who delivered the main opinion in Dandridge's case, said:

"The reason why such indignities put upon the persons of judges when off the bench were punished summarily as contempts was, to use the language of Blackstone, 'because they demonstrate that gross want of regard and respect which, when courts of justice are once deprived of their authority, so necessary to the good of the Kingdom, is entirely lost among the people.'"

Immediately following, Judge Dade further said:

"Nor, in this particular and for this end, is it of the least importance whether the contumely is used in open court, at the moment the occasion occurs, or at the moment afterwards, when the crier has proclaimed adjournment, as the judge descends the steps of the bench or those at the court-house door. The only real question in either case is whether it is his official conduct for which he is challenged and insulted."

He then adds:

"It was, however, very necessary for the defendant to draw this distinction, for which his counsel contended, if possible, because it was foreseen that there was no reason for protecting from insult the person of the judge in court on account of his official conduct which did not equally apply to protection out of court on the same account. It would have been shifting the ground to maintain that the insult in court was punishable because it interrupted the business of the court, because, beside its being sometimes of such a sort as not to produce this effect. It is referable in that respect to another head of attachment, viz, that for obstructing the power of the court."

Judges White and Parker rendered concurring opinions to the same effect. Judge Parker said:

"If any of the officers of justice are so threatened and insulted for their conduct as to make it apparent that such attacks, if permitted, would have influence on the general administration of the law, the offender is obnoxious to punishment on every principle of justice and expediency."

The conclusion that Dandridge was guilty of a contempt was unanimous, the ten judges concurring in the judgment. *Commonwealth v. Dandridge*, supra, is cited approvingly on the general doctrine of contempts, though not as to this precise point, by the Supreme Court of the United States in *Ex parte Terry*. (128 U. S., 304; 9 Sup. Ct., 77; 32 L. Ed., 405.)

It is said that punishment, as for a contempt, of an assault upon the officer because of past discharge of duty is inconsistent with the spirit of our institutions; that such an assault is nothing more than an assault upon a private person, and can only be dealt with as such; that punishment under the contempt power of the court of such an offense invests the person of the judge with privileges at war with the spirit of equality between citizens which our form of government maintains; and that it is, therefore, without the power of the courts in this country to treat any assault upon the officer, no matter what the motive, when he is not actually engaged in the discharge of any duty, as a contempt of court.

The necessities of government require, in many instances, that a difference be made between public servants and private citizens. For instance, it is for the public good that a Representative shall not be questioned elsewhere than in the House for

which he is a member for words spoken in debate. Such a privilege is the prerogative of the whole people; but it can only be made effective by giving protection to the individual who represents them, when it would not be accorded under like circumstances if he were acting in a mere private capacity. So it is of many statutory and constitutional privileges which are created for the public good and not for the sake of the individuals who hold official positions. An assault upon a judicial officer which grows out of official conduct necessarily differs from an assault upon a private individual about a private matter.

The consequences to society are not the same. One affects the administration of justice; the other does not. The motive of the assault under every system of laws determines the gravity of the offense. An assault upon one who is a judge about a matter disconnected from his official duties is not of concern to the court, for it does not affect the administration of justice and does not differ in any wise or in any degree, in its legal aspects at least, from an assault upon any other individual. It would be a bald usurpation of authority for the court to attempt to pervert the contempt power to punishing an act which in no way concerns the administration of justice.

The case here grows out of an assault upon a judicial officer because of past discharge of duty—a thing which gravely affects the administration of justice. Justification of punishment in such a case, as for a contempt, is found in the consideration that an assault upon a judicial officer for such a reason attacks the great prerogative of the people to have and enforce the fearless administration of justice.

It is vital to the enjoyment of civic rights and free institutions that tribunals which pass upon the life, liberty, and property of the citizen, and his relations to government, and its power over him, shall be and remain uncorrupted and independent. Hence the power to punish summarily contempts of their authority, to use the language of Blackstone, "is an inseparable attendant of every superior court." From time immemorial, in the mother country, the courts have exerted the power not only to compel obedience to their commands and to preserve order and decorum in their presence, but also to crush unlawful influences of any kind which tended to undermine their authority, or to corrupt or awe their officers in the discharge of duty, or assailed in any way those under the immediate protection of the court.

This power was exerted to put down evils which tended to scandalize the general administration of justice, as well as acts which affected particular cases before the court. Courts allowed no violent intermeddling with persons concerned in the administration of justice whether the force was brought to bear upon them while in office and discharging their duties or when out of office because they had discharged their duties. "Instances," to use the language of a learned judge, "were frequent where men have been fined and imprisoned for menacing and assaulting their adversaries for suing them, the counsel or attorney for bringing suit, the witness for his testimony, the juror for his verdict, and even the jailor for keeping him in custody."

Courts uniformly regarded these things quite as vicious as assaults upon officials while actually engaged in the discharge of duty. They punished such "misbehavior" in order to curb an evil which, if let alone, weakened or threatened fidelity to trust of every person who then assisted or might thereafter assist in the administration of justice. This was the settled rule in the courts of the mother country. When the colonists came to our shores they brought with them the heritage of the Magna Charta, the writ of habeas corpus, and the right of trial by jury. They also brought with them the principle of administering justice by courts armed with ample power summarily to suppress all manner of evils which threatened their independence or assailed the freedom and impartiality of their officers in the administration of justice.

These attributes at the common law followed the courts set up here, and inhered in their very constitution. At the common law it was a contempt to publish criticisms of the acts of the court, and still more so to assail their officers by physical force because of the past performance of official duties. When, upon the separation from the mother country, the colonists set up freer institutions, based on the inalienable right of the people to govern themselves, and the conviction that the people could be safely trusted with all their own powers; when it was declared that treason against the United States shall consist only in levying war against them or in adhering to their enemies and in giving them aid and comfort; and when Congress was prohibited from making any law abridging the freedom of speech or the liberty of the press or the right of the people to peaceably assemble and petition for redress of grievances, it followed inevitably, though not readily acknowledged at first, that government could not suppress or regulate these rights to the extent practised in less enlightened ages in the mother country and in the early periods of the Government here, and that all powers of government, whether exerted by the legislative, judicial, or executive department, to suppress criticism or even libels upon the Government were hostile to the spirit of our free institutions.

Profound distrust of the ability of the people to govern themselves alone made it possible to enact the alien and sedition laws, which expired by their own limitations and were ever afterwards condemned by the aggressive power of a dominant public opinion, which proclaimed as a maxim of government that greater danger to liberty and free institutions lurked in any power to curb the right of free speech and liberty of the press than from any abuses which might result from leaving them untrammelled. This public opinion, which has been acquiesced in by all departments of the Government and gone unchallenged for a century past, has pronounced a construction of the Constitution in this respect which has silently incorporated itself into that instrument.

The purpose of the constitutional command as to "a speedy and public trial by an impartial jury" would fail of fruition unless what is done in the courts is made known to the people, and, when improperly done, is held up for their condemnation. The right of a court to punish, as for contempts, criticisms of his acts, or even libels upon its officers, not going to the extent, by improper publications, of influencing a pending trial and usurping direction and control of the issue, would not only be dangerous to the rights of the people, but its exercise would drag down the dignity and moral influence of these tribunals. Such criticism is the right of the citizen, and essential not only to the proper administration of justice but to the public tranquility and contentment. Withdrawing power from courts to summarily interfere with such exercise of the right of the press and freedom of speech deprives them of no useful power.

Liberty of the press and freedom of speech are not more favored than the right of the citizen to an impartial trial in the courts of the land. These are correlative rights, and the freedom of the press can not be perverted to frustrate the right to a fair and impartial trial. According to the prevailing and better opinion in the State courts, exercise of the liberty of the press, when it goes to the unlawful extent of injecting its influence into the trial of a particular case, so as to affect the issue, may still be punished as a contempt, notwithstanding provisions found in several State constitutions which are equivalent, in this respect, of the commands of the Constitution of the United States regarding the liberty of the press and freedom of speech.

The independence of the judiciary is a cherished principle in our plan of government. Courts in this country strike down legislation and restrain executive acts affecting the life, liberty, and property of the citizen to an extent unknown in monarchical countries, where courts have less authority and play a humbler part in protecting the citizen against the aggressions of government. There is not, therefore, and can not be, any incompatibility between our institutions and the possession by the courts of the fullest power to vindicate their authority and preserve their independence against physical assaults directed against their officers because of past discharge of their duties. Liberty of the press and freedom of speech regarding government do not include the right to resort to violence against its officers.

Whether or not section 725 of the Revised Statutes of the United States (U. S. Comp. Stat., 1901, p. 583) deprives Federal courts of the power to punish, as for contempt, improper publications made to influence the trial of a pending case, and coerce or control the judgment of those intrusted with the duty, is not at all involved in the question before the court. It is to be borne in mind that this section of the Revised Statutes was induced by the acquittal of District Judge Peck, who was impeached for imprisoning an attorney for a criticism of one of his decisions after the case had ended in his court.

The acquittal was largely due to the consideration that the common law authorized the judge to treat such criticism as a contempt of court, and that there was not sufficient evidence in other respects to show that the judge had acted corruptly or maliciously. Public opinion, which had not forgotten the passions aroused by the alien and sedition laws and the partnership of judges in their enforcement, looked upon the act of Judge Peck as an attempt of the judiciary to revive the principles of these obnoxious laws and to assert common-law powers which were inconsistent with our Constitution and institutions. Congress intended by this statute to put an end to the power of any Federal court to prevent, by punishment as for contempt, criticism of judicial acts or decisions, or even mere libels on individuals concerned in the administration of justice.

The statute was drawn by Mr. Buchanan, one of the managers of the impeachment, who afterwards became President. It is doubtful, to say the least of it, whether any of the eminent lawyers in the Congress which adopted this provision taken from a similar statute in Pennsylvania, had in mind anything more than to prevent the punishment, as for contempt, of exercises of the right of free speech and liberty of the press in criticising and denouncing judicial acts. It is questionable, to say the least of it, whether Congress intended to take away from the courts the existing common-law power to punish, as for contempt, improper efforts, in the guise

of published statements or comments, pending the trial of a particular case, to secure judgment therein, in obedience to the dictates of passion or prejudice, or to thrust other ulterior considerations before the tribunal, against which justice and the law seeks to guard judge and jury in the trial and decision of causes.

The changes to which we have adverted in no way touch the power of the courts, under their contempt power, to deal with physical assaults upon their officers in resentment of their official acts. This power remains as at the common law, unless withdrawn by some statute of the United States. Whatever may be the power of Congress to regulate this matter as regards the Supreme Court, which is created by the Constitution, it is not doubted that it may regulate the exercise of the power by inferior courts.

Is the power to punish this "misbehavior" as a contempt taken away by any statute of the United States? The judiciary act of September 24 1789, invested the courts of the United States with "power to punish by fine or imprisonment all contempts of authority, in any cause or hearing before the same." Of this statute the Supreme Court, in *re Savin* (131 U. S., 274; 9 Supt. Ct., 699; 33 L. Ed., 150), observed:

"The question whether a particular act constitutes a contempt, as well as the mode of proceeding against the offender, was left to be determined according to such established rules and principles of the common law as were applicable to our situation. The act of 1831, however, materially modified that of 1789, in that it restricted the power of the courts to inflict summary punishment to certain specified cases, among which was misbehavior in the presence of the court, or misbehavior so near thereto as to obstruct the administration of justice." (*Ex parte Robinson*, 19 Wall., 505; 22 L. Ed., 205.)

It is as true of the later statute as of the first that the question whether a particular misbehavior "in the presence of the court or so near thereto as to obstruct the administration of justice" constitutes a contempt "is left to be determined," as before, by the court. The later statute does not in any way attempt to define a contempt, save by the definition, so far as concerns this case, that it must be "misbehavior in the presence of the court or so near thereto as to obstruct the administration of justice." Neither does the statute of March 2, 1831, "declaratory of the law concerning contempts of court," which, in its second section, creates the criminal offense "of corruptly or by threats or force obstructing or endeavoring to obstruct the due administration of justice therein," define what things amount to an obstruction to justice.

So the questions of what "misbehavior in the presence of the court or so near thereto as to obstruct the administration of justice" constitutes a contempt and what constitutes an obstruction to the "administration of justice" are left, just as before, to be ascertained by the court, and if such misbehavior fall within the definition above it may still be punished summarily by the court as a contempt.

As we have seen, the chief purpose of the statute "declaratory of the law of contempts of court," approved March 2, 1831, which is now codified in section 725 of the Revised Statutes (U. S. Comp. Stat., 1901, p. 583), was to prevent the punishment, as for contempt, of what were really only the exercise of free speech and liberty of the press in criticising judicial officers and acts and chronicling the doings of the courts. The inherent existing power which this act regulated included not only the means of doing good in other respects, but prevented acts subversive of the authority and independence of the courts, which weakened the administration of justice and brought it into scandal. In view of the beneficent purpose for which the power was used in the latter respect, we can not, in the absence of words forcing that conclusion, impute any design to Congress, in dealing with an evil exercise of the power, to destroy also the existing right to exert this power for good in upholding the purity and independence of the courts. The words do not demand such a construction, and to give them effect would deny powers very essential to courts in "the administration of justice."

It may have been thought by some that Congress, having provided the punishment of obstructions to justice in the second section of the act "Declaratory of the law of contempts of courts," now section 5399 of the Revised Statutes (U. S. Comp. St., 1901, p. 3656), intended that such acts should not fall within the "misbehavior" which can be summarily punished under the contempt power. The Supreme Court has held that the fact that such an offense is punishable by indictment does not "make that mode exclusive, if the offense is committed under such circumstances as to bring it within the power of the court under section 725 (U. S. Comp. St., 1901, p. 583), when, for instance, the offender is guilty of misbehavior in its presence, or of misbehavior so near thereto as to obstruct the administration of justice." (*In re Savin*, *supra*.)

In one respect the act of March 2, 1831, is broader than the judicial act of September 24, 1789. The act of 1789, in its words at least, confined the contempt power of the court "to contempts thereof" in "any case or hearing before the same." Under that act, to bring the "misbehavior" within the power of the court when it did not occur in the presence of the court the misconduct must relate to a case or hearing before the same. The case must be pending "before" the court; not a case which is no longer "before" it, in consequence of having been decided or dismissed. The first section of the act of 1831 (now section 725) omits the words "contempts thereof" in "any case or hearing before the same," found in the act of 1789, and authorizes the punishment of "contempts of their authority" in "the presence of the court or so near thereto as to obstruct the administration of justice."

Under section 1 of the act of 1831 (now section 725 of the Revised Statutes) it is immaterial that the case is no longer "before" the court if the misbehavior concerning it is "in the presence of the court or so near thereto as to obstruct the administration of justice." It is only in this second section of the act of 1831, now constituting section 5399 of the Revised Statutes, that we find the words "therein" or "in any court of the United States," which are not contained in the first section, which regulates the contempt power only.

The words "obstruct the administration of justice" are found in both sections. Why, when regulating the existing contempt power in this carefully drawn statute, did Congress in the first section, dealing with the contempt power only, use the words "obstruct the administration of justice," and then in the next section, which does not regulate the contempt power and only defines crime, avoid the use of the general term "administration of justice," or rather qualify it by preceding the term with the word "due" and following it by the word "therein," so as to read "obstruct the due administration of justice therein?"

The words "obstruct the due administration of justice therein" used in a penal enactment necessarily limit the offense there denounced to cases "therein"—in the court, still "before the same"—and exclude past cases. They do not cover "misbehavior," which, though not directed to a particular case, affects all cases alike in the general administration of justice. The words "obstruct the administration of justice" in the first section, which is not penal, regarding a power to preserve the purity and independence of the courts, and thereby promote the dispensation of justice, are broad enough to include not only improper acts in particular cases, but those which undermine the general administration of justice as well.

In view of the history of this statute and its studied discrimination in the use of the words in the different sections, we can not presume that Congress, in regulating, in the first section, an existing power, the possession of which is of such vital importance to the objects for which courts are created, regarding misbehavior "so near to the court as to obstruct the administration of justice," used the term "administration of justice" in the same narrow sense in which it is employed in the subsequent section, creating an indictable offense against the administration of justice, which offense, by the use of the qualifying word "therein," is confined to misbehavior in particular cases pending in the court, and therefore does not include acts which tend to subvert the purity and independence of courts or scandalize justice unless done in relation to a particular pending case. The ruling on the indictment in this case sharply illustrates the distinction. The assault here is a blow at the fearlessness and independence of judicial officers, and scandalizes the general administration of justice; yet it could not be punished by indictment under this second section of the act of 1831 (sec. 5399 of the Revised Statutes), because it did not relate to any pending case in court—"therein."

Bearing in mind that Congress, in the present statute, liberated the power so that it may deal with contempts—"misbehavior"—with reference to past as well as pending cases, if they fall within the contingencies prescribed, and presuming, as we must, that Congress was desirous that the inherent power the courts then possessed to preserve their purity and independence in the general administration of justice should not be unduly shackled, there can be little doubt that Congress deliberately rejected the employment of the word "therein" after the words "obstruct the administration of justice" in the first section in order to avoid striking down the power to prevent evils which attack the administration of justice itself and, by determining the security and independence of its officials, bring it under suspicion and scandalize it in the face of the people, although, as here, the misbehavior does not obstruct justice in any particular case.

The assault here was clearly an offense of that character. Violence done to the judge because of the discharge of duty may undermine his independence and constrain his judgment and affect every subsequent case which comes before his court. The judicial mind which once yields and pronounces judgment according to the dictates of force or fear is degraded and impure. It will weaken again under the

same influence, and successful exertion of the influence in one case will beget other unlawful endeavors, with like results. Such a mind is not a fit source from which to seek justice in any case.

So it is that such acts become obstructions to justice, which affect judicial fearlessness and independence in every case before the court. They thus fight against justice in the particular cases, as well as in its general administration.

What is meant by the words "so near thereto" has not been defined by judicial decision. In view of the evil intended to be suppressed, they mean not the place where the "misbehavior" is committed, but the power of the "misbehavior" to harm the administration of justice. If the force put in motion by the "misbehavior," at whatever place it is committed, assails or threatens the authority and independence of the court, then the "misbehavior" is so near thereto as to be punishable under this section. (*Myers v. State*, 46 Ohio St., 473; 22 N. E., 43; 15 Am. St. Rep., 638.) In *Savin* Petitioner (131 U. S., 269; 9 Sup. Ct., 699; 33 L. Ed. 150) the matter came under discussion; but the Supreme Court declined to decide whether the words "so near thereto as to obstruct the administration of justice" refer "only to cases of misbehavior outside of the court room, or in the vicinity of the court building, causing such open or violent disturbance of the quiet and order of the court, while in session, as to actually interrupt the transaction of its business."

In that case *Savin* attempted to bribe a witness in the witnesses' room while he was waiting to be called into the court room. His offense took place out of sight and hearing of the court, though the trial in which the witness was to testify was then going on. The judge did not know what transpired at the time, yet *Savin* was held to be guilty of "misbehavior in the presence of the court." In his opinion, Justice Harlan quotes approvingly Bacon's *Essay on the Judicature* No. 57, where he says: "The place of justice is a hallowed place, and therefore not only the bench, but the foot pace, and the purprise thereof, ought to be preserved against scandal and corruption."

Justice Harlan adds:

"We are of opinion that, within the meaning of the statute, the court, at least when in session, is present in every part of the place set apart for its own use, and for the use of its officers, jurors, and witnesses, and misbehavior anywhere in such a place is misbehavior in the presence of the court."

If the inanimate things which are devoted to the use of justice are hallowed in the eyes of the law, at least when the court is in session, how much more so, in principle, must be the security against assaults, because of the discharge of duty, of the person of the officer who orders and controls the administration of justice therein, no matter where he is. Is not the judge "so near" to the court that whatever unlawfully influences him unlawfully influences the court?

No useful purpose would be subserved by discussion of the distinction between the contempts in *facie curiæ* and constructive contempt which may be punished summarily by the court. There is a learned and instructive opinion on this subject by Judge Hammond, in *The United States v. Anonymous* (C. C., 21 Fed., 761). He says:

"It is quite clear that it is a mistake that all contempts not committed in the presence of the court are constructive only. The mere place of the occurrence may not be an absolute test of the question. It may depend on the character of the particular act in other respects besides the place where it happened. When it takes the form of an assault upon the officer, as when he was beaten and made to eat the process of the court and its seal, as in *Williams v. Johns* (2 Dickens, 477), the impediment to the even administration of justice may be quite as direct in its operation to that end, happen where it may, as if the party had ridden his horse to bar and dragged the judge from the bench and beaten him."

If the people of a distant locality, frenzied by opposition to a particular law, should band together to prevent a United States commissioner being stationed among them, and drive him away by force, the place of the occurrence would be immaterial in determining the character of the offense, no matter how far distant from the sittings of the court.

Such lawless acts would certainly not disturb the sittings of the court or interrupt the orderly dispatch of its proceedings, yet the direct effect in law and morals would be as obstructive of justice as if the same lawless assembly had snatched prisoners from the hands of the marshal or kidnaped witnesses to prevent their going before the grand jury, or, for that matter, arrested the judge himself, when found miles away from the court-house, and detained him by force, to prevent his holding the next session of the court. No one would doubt the power to punish such acts as misbehavior "so near to the court as to obstruct the administration of justice," for they arrest or disturb the powers of the court as effectually as when done in the very presence of the court. (See *In re Brule* (D. C.), 71 Fed. Rep., 943.)

What is said as to the judge of a court applies with equal force to persons who aid it in a judicial capacity in the administration of justice. Commissioners are important officers in the administration of criminal justice. Though they do not hold courts of the United States, they perform judicial duties. The district court appoints them. It appoints them to posts of duty generally at a distance from the court. They are on duty, as regards matters pertaining to their office, though not actually engaged in holding an examination, while they remain at their posts in readiness to discharge their duties. These duties can not be fearlessly performed if commissioners must seclude themselves in their offices. They have the right to go on the highways free from fear of molestation on account of the discharge of duty, whether past or prospective. Certainly it is of concern to the court which appoints the commissioner and the administration of that part of justice which is confided to him that he be protected from violence and intimidation as to his fidelity to his trust. This he does not have unless the court protects him against violence because of his having done his duty.

He is, we repeat, an officer of the district court and under its protection as to the discharge of duty. Whatever obstructs him or degrades him and prevents the fearless discharge of duty necessarily obstructs justice in the court of final jurisdiction, one of the first steps of which must be taken by him in the examination and holding offenders to answer in the district or circuit court. Assaults upon him while he remains in office, because he has discharged its duties, are assaults upon a representative of the court because he has borne true allegiance to the law and the court. If the lawbreaker may attack him as a representative the court may defend him as a representative. It is true that the commissioner, as an individual, is under the protection of the State laws.

Local authorities are sometimes unable to give him adequate and prompt protection. The State law takes no concern in the Federal officer as such or in protecting his authority or in preventing violence to him because he has discharged his duty. It is not an offense against the State to resist the authority of a Federal officer. The Government established by the Constitution is not dependent on State laws for means to protect its officers in the discharge of duty. The Executive may undertake this duty instead of relying on the laws or officers of the State. (In re Neagle, 131 U. S., 1; 10 Sup. Ct., 658; 34 L. Ed., 55.) On the same principle the court may do so in behalf of its officers. If it has any power it may lawfully exert it to that end. How far the Government may intrust the protection of its officers in that behalf to the laws of another government, which protect the officer as an individual only, is a matter of governmental policy.

The fact that the laws of one government operating to shield the individual only may, in that way, furnish protection to the officer of another government may be a reason why the latter power does not pass statutes of its own to shield its officers, but it does not touch its power to do so or render it improper to rely on means of its own instead of invoking the laws of another power. (Ex parte Siebold, 100 U. S., 371; 25 L. Ed., 717.) Whatever the reason for the omission to pass statutes against the evil now under discussion, it affords no reason why the court, if it has the power, ought not to exercise its authority to protect its officers against the evil.

Mr. THURSTON. Mr. President, I have not yet exhausted the time allowed me, but my presentation of this case is at an end.

This respondent is at your bar asking that justice which in my soul I do believe will result in his acquittal and vindication. His accusers would seek to invoke a harsh and cruel justice. In the past centuries it has been typified as a marble statue, with cold, stony heart, bandaged eyes, and frowning brow. To no such justice as that do we appeal. Had I the painter's gift, I would paint a justice for humanity, a justice for a liberty-loving people, a justice for the twentieth century, that glorious age in which we live. I would paint that justice as a living, breathing, glowing woman, with rosy cheeks and gentle brow, and eyes wide open to the sufferings and sins of this imperfect world.

Within her bosom there should be a human heart that beat and throbbed and thrilled with human pity, human sympathy, and with human love. Her ears, that listened to the evidence, should be attuned to the appealing voices of her children calling "mother." Her lips, that spake the law and pronounced the judgment, should be

fresh from singing them lullaby songs; and the hands and arms that held the scales and wielded the sword should be accustomed to dandling little babies on her knee and holding them to her mother breast. To this human justice we do appeal.

This respondent asks no sympathy except such as is the right of suffering mankind. He fears no foes and asks no favors of his friends. He is here believing he is right, and as such he asks you to sustain him in that contention. Sick, infirm through the suffering that has been brought upon him by this long-continued persecution, he yet has courage to stand at your bar and meet his accusers face to face.

Look at the man upon whose brow you are asked to place the stigma of dishonor.

Mark this man well. A good citizen, an upright judge, his private life has been as stainless as the driven snow. Those who have known him best have loved him most. Mark this man well. They are imprinted on the countenances of men evidences of character that he who runs may read. God writes in a legible hand all over the faces of created things. He has written modesty on the drooping petals of the violet of the valley and majesty on the snow-capped summit of the eternal hills. Under His immutable law every matured human face tells the story of the character of the man. Deeply graven in his countenance are lines that tell of early struggles against adverse conditions, of duties bravely done, of responsibilities calmly assumed.

That face of his tells the story of a life that should be an emulation to the youth of this or any other land. Through his calm eyes we read the shining of a pure soul within. He has not been guilty of any known offense. His heart is pure; his conscience clear. He asks no favor and no pity; but he does ask justice. He comes to you expecting that you will give him the benefit of the evidence and the law. He has no excuses to offer for those imperfections and failings which are the common heritage of all the human race, and calmly and fearlessly as he would ask the judgment of his God he here and now invokes the justice of the Senate.

Mr. Manager DE ARMOND. Mr. President, in concluding the argument for the managers, representing, in the solemn language employed in these impeachment proceedings, the House of Representatives and all the people of the great United States of America, I shall not endeavor to invoke justice from the faraway and stern and inhospitable past. I am willing to adopt, as the model of the justice which we ask, that beautiful figure painted in the eloquent peroration of the distinguished counsel for the respondent—the adorable matron, with pure heart palpitating with love for human kind, ready to do justice in kindness and in mercy. Let that be your model of justice, and to that spirit of justice we appeal.

I could wish that such a spirit of justice had been in the court of Judge Charles Swayne when that other man, older by ten years than Charles Swayne, with more than seventy years of his life passed, stood at the bar of that court presided over by Charles Swayne, and in mockery of justice, in contempt and defiance of law, without regard for human rights, without regard for the courtesy due to an attorney, without regard to anything which should prevail in a court, was sentenced as a common felon to a common jail, to be locked up in a felon's cell. If there had been there then such a spirit of justice, if there had been there then any spirit of justice, drawn from any age or

any clime in all the wide world's history or expanse, this case would not now be pending before this court to determine whether the man, in whose heart resided no such ideal and in whose breast blossomed no such spirit of justice, shall be removed from the high office which he has disgraced.

In 1889 or 1890 Charles Swayne was lifted up that rugged mountain, which counsel so eloquently says he climbed with patience and diligence and difficulty—lifted up through the mistaken appointment of an honest President, a true patriot, a soldier, and a great lawyer. That is the way he got up the mountain; that is the way he reached the height; and now we view him upon the height, and this Senate is to determine whether he shall remain there, or whether he shall be brought down to the level from which he ought never have been lifted, and from which by no exertion or achievement of his own could he ever have risen.

So far as these proceedings are concerned, in 1893, we find a sample of the quality, judicial and personal, of Charles Swayne, when he received a "courtesy" from the receiver of a railroad company, a receiver who, if not appointed by him, was under his control and direction. A courtesy! Many words are abused, and grievous at times are the burdens placed upon a beautiful and most respectable word. Courtesy, aye! A, by virtue by his judicial authority, takes possession of certain properties of B, and puts them into the custody of C, and C acts "courteously" when he gives A the use of these properties! Such courtesies! But this is a little thing, say gentlemen. It cost but very little; it amounted to but little; and it was a long time ago. It is true, these gentlemen say, that the statute of limitations can not be invoked, and yet they invoke it, or seek to invoke it.

What is the condition of that case? I will touch on it right now. Here was a piece of property in the hands of a receiver under the control of the court; and here was the judge using that property for the judge's own benefit and to save expense to the judge.

The learned counsel for the respondent says that perhaps that was not just an appropriate act; that possibly it ought not to have been done; but that it was a comparatively little thing; that the sentiment has changed greatly in the ten or twelve years which have elapsed since that happened; that there is now a sentiment abroad in the land that judges should not accept favors from great corporations; but that then, in that far-away period, eleven years ago, the sentiment had not reached that elevation, and this judge could not be expected to rise to it.

I think, Mr. President, that even further back than eleven years ago there were judges in this land, judges whose learning and whose probity, judges whose charity and whose justice, judges whose humanity and whose manhood illustrated and ennobled the life of the judiciary in this country, and were the common honor and are the common heritage of the people of this country and the good people of the world all over, who had the idea then, even in those years of the long ago, that it is not just the thing for a judge to accept "courtesies" from those who would be asking courtesies of him and who, if he have a reciprocal spirit in him, would perhaps be securing them.

Judge Swayne was appointed judge of the northern district of Florida. The lines of that district were changed in 1894 by an act which took effect in July of that year. Judge Swayne, at the time,

lived at St. Augustine, within the district before the lines were changed, but outside the district after the lines were changed. That is a beautiful and pathetic picture of his counsel, showing how Judge Swayne had reared his household altar at St. Augustine, and how rudely and unceremoniously he was soon called upon to provide a chicken coop somewhere else—a beautiful figure and a rapid transition from the household altar to the chicken coop.

Judge Swayne was not required to do anything. The Congress, in the exercise of the power which the Constitution gave it, saw proper to change the lines of that district. That legislation placed upon Judge Swayne no compulsion to move into the new district, no compulsion to remain in the office. But a law passed a generation before Judge Swayne was born placed upon him the absolute compulsion to fix his residence in the district according to its new lines or to abandon the office.

The age of Judge Swayne has been given. He was born in 1842. Thirty years before Judge Swayne was born the Congress of the United States enacted a law, now embodied in section 551, Revised Statutes, requiring a district judge to reside in his district. The question of the enactment of such a law arose years earlier. The discussion was participated in by makers of the Constitution as well as by contemporaries of those illustrious men. In the body which passed the law were those who had gathered in the spirit of the Constitution, not merely from the lips of those who had made it, but through participation in the making of it.

The law was passed in the full belief, unchallenged by anybody, that the power rested in the Congress to pass such a law, and it was declared that a violation or disregard of that law should constitute a high misdemeanor, employing the very language of the Constitution itself.

And yet we find, thanks to the facile pen of some modern essayist, whose product is embodied in the record in this case, some unknown great man, that it is impossible for Congress to add to or take from the category of "high crimes and misdemeanors" as embodied in the Constitution in the clause relating to impeachments.

Those who lived in that early day, those who participated in the discussions that led up to that early legislation, and those who enacted that law did not think just as this modern writer and essayist does think. This graceful writer, but as he has demonstrated, evidently poor lawyer, confesses that he can not define, and he says nobody can define, just what was meant by "high crimes and misdemeanors;" but he insists that there was such a fixed, settled, immovable, unchangeable, ever-enduring meaning and limitation attached to and embodied in it that nothing can be added to it or taken from it; and yet he does not know what it is; he does not tell us, and he says nobody else can tell what it is.

The doctrine, aside from this authority which the respondent's counsel quoted with so much approval and indorsed so fully, the doctrine of other essayists and other commentators upon the Constitution, the doctrine of men whose names have gone into our history as illustrating it in its best phases, and as demonstrating the greatest capacity and the highest achievements of the human mind, was and is that Congress could add to what might be embraced in the term, and that the Senate of the United States, on the trial of an impeachment, was made by the

Constitution itself, and ever must be, the final authorized judge of the meaning.

Suppose that this Republic were to endure, as all of us most sincerely hope it will, for centuries and multiplied centuries, and suppose that a thousand years hence, or five thousand years hence, after agencies and forces undreamed of to-day, as those playing important parts in the drama of to-day were undreamed of a short time ago, were brought into requisition, and out of their use and development new and strange conditions unthought of and unthinkable to-day should arise, and that the Congress, in its enlightened wisdom, should conclude to declare this, that, or the other thing arising out of the development of these new conditions high crimes and misdemeanors.

These wise commentators of the school of this essayist and their successors, if they are to have succession in a more enlightened age of the world and of the country, would say: "You can not impeach for that. You must go back into the English parliamentary law for the chart of your powers. At the adoption of the Constitution you were confined within the Englishman's definition of high crimes and misdemeanors and confined to his catalogue of them; but what his definition was or is and what was or is embraced within his catalogue we do not know, and nobody knows. Those who framed the Constitution meant to deny and did deny to the Congress all power whatsoever to declare anything a high crime or misdemeanor which was not such when the Constitution was made."

Then if you or your successors should modestly say to these gentlemen, "Pray tell us, then, what are the things for which an impeachment will lie? What is comprehended within the term 'high crimes and misdemeanors?'" What, within the meaning of the Constitution, made by those short-sighted men, so long, long ago in their graves, is embodied in these words?" they would answer then, I suppose, as this wise commentator of to-day answers, "I do not know; nobody ever has said, and nobody will ever be able to say."

Drifting back to English history, counsel claim to have discovered—and it is a discovery of something which does not exist, I think; but I pass that by—that no judge in English history ever was impeached or tried on impeachment except for an offense committed in the actual discharge of the duties of a judge, sitting on the bench itself. Well, now, if that were true, what does it prove? It proves nothing—absolutely nothing.

Reflect upon it for a moment. Suppose all these trials had been with reference to some particular offense. It would be just as logical to contend that for no other offense committed upon the bench in the discharge of judicial duty would impeachment lie. How many cases must there be before this is settled? They say there have been but few, and that is true. How many are necessary to fix it that there can not be a trial by impeachment for any other offense? There again they can not answer.

The truth of the matter is that this question of impeachment and the right and power to impeach, and the things for which people could be impeached in Great Britain, shifted and changed with the shifting and changing judgment and legislation of the times. At one time it was supposed to be legitimate and proper, and the supposed power was exercised, to impeach and convict and remove from office and imprison for the advocacy of religious views and the propagation of

religious doctrines which, at another time, were held to be the correct views and the sound doctrines relating to the subject of religion in that great realm. So it has been and so it is and so it will be.

These gentlemen ignore entirely the question as to good conduct—"during good behavior." They say that the provision for removing judges by address is not embodied in the Constitution. What do they say, then? They say there is no way of removing them except in a few cases to which, they say, the constitutional provision respecting impeachment implies.

As was said by Mr. Morris, when that matter was under discussion in the constitutional convention, the judges ought not to be removed on the ground of lacking in good behavior except upon a trial. What trial is provided? The kind of trial you have here now. The trial before the Senate of the United States, on impeachment by the House of Representatives. There has been embodied in that one method all the power that resides in the Government in all its branches—all the power of the people of this vast country, this great and mighty Republic—to remove from office an offending civil officer. And precisely the same provision that applies to the judges applies to all other civil officers.

The gentlemen discriminate respecting the judges. Where do they get the ground for the discrimination? It is not in the Constitution. There is nothing in the Constitution suggesting that a judge can be removed from office only for offending on the bench, and that as to other civil officers they may be removed for offenses off duty, or not so narrowly official.

The learned counsel for the respondent who closed the case on the other side seemed to take lightly the suggestion of Mr. Manager Palmer in the brief which he filed, and of my other colleagues who argued this case, that according to the commentators upon the Constitution, according to the spirit of the Constitution, according to the principles of law governing impeachment, it is within the power of the House of Representatives to vote impeachment, and it is within the just and constitutional powers of the Senate to convict, for conduct in a judge off the bench and away even from his judicial transactions.

The logical conclusion from the contention of respondent's counsel is that no matter how vile any civil officer of the Government may be, no matter how great the sum total of the individual items of his offending, so long as the offending is not on the bench or in the active technical conduct of his office, the whole power of the Government is too weak, the arm of the House of Representatives too short, and the judgment of the Senate too puny to reach the offender and protect the public from the vile contamination of his continued presence in office. We do not take that view of the matter.

Counsel for the respondent, it seems to me, drops into a strange contradiction with respect to the facts and the law relating to the first three articles of impeachment. He argues part of the time upon the theory that the things charged there are not offenses, and then swinging around to another branch he reaches the conclusion and proclaims that the charge is one of petty larceny; that this judge is charged with stealing from the Federal Treasury. As to the question whether it is petty larceny or grand larceny, I presume the amount would determine it.

The amounts which it is charged and stands admitted that the respondent took from the public Treasury beyond his actual expenses is some hundreds of dollars. So, I take it, that the honorable counsel for the respondent was mistaken in characterizing this as petty larceny. And if, to accept his own characterization of it, it is larceny, either grand or petty, is it or is it not a high crime or misdemeanor? Have we reached the stage of the proceedings, following the star of this beautiful goddess of justice that the eloquent gentleman has been following in speech, where larceny is not comprehended and contained within the term "high crimes and misdemeanors?" I hardly think so.

The eloquent gentleman says that there have been baleful influences surrounding this respondent; that out of the dark hands have reached to clutch him; claws have protruded to scratch him; influences have been brought to drag him down and degrade him. This is mysterious talk. This is going into that realm of darkness into which we have not penetrated. This is bringing before the Senate, perhaps for the effect of a fine rhetorical period, that of which there is no evidence—that of which I think there could be no evidence.

We have been conscious, Mr. President, of influences; we have been conscious of a reaching out from the dark; we have been conscious of whisperings from behind doors; we have been conscious of efforts to poison the air to have this case tried and determined upon something else than the law and the evidence, according to the merits. But they have not been to the prejudice of, and they have not been designed to bring unjust punishment upon, the man who stands at your bar. They have been designed and employed that justice may go astray, and that the man proven guilty may stand acquit.

Immunity for the guilty is punishment for the innocent. The acquittal of Judge Swayne, if he is shown guilty, is the punishment of the people of the northern district of Florida—the people of the northern district to-day; the people who may be there in the years to come, when Judge Swayne, if you turn him loose again to prey upon them, will be their judge, and if we may judge his future by his past, their tyrant and oppressor.

There were two courses open to Judge Swayne and his counsel with respect to these charges. They have not taken either. The one is to deny and stand upon the denial. The other is to admit and plead whatever of excuse or extenuation they may think exists.

Take the matter of the allowance for traveling expenses. Judge Swayne is standing distinctly and positively upon the ground that he examined the law, that he studied the law, that he was acquainted with the law, that he knows the law, and that he is entitled to \$10 a day. If he is entitled to \$10 a day, he ought to be acquitted on these three charges. There is no question about that. Is he entitled to it? Why eliminate the words "not to exceed \$10 a day" in applying the law?

What meaning can you give to them if he is entitled to \$10 a day, even though he did not spend 10 cents? I should like to know what meaning is to be given to them. There is a meaning in them, and that is, the law does not give him \$10 a day. Respondent's counsel read from the debates which took place in the House of Representatives and in this august body when there was consideration of appropriation bills in which clauses relating to these matters are to be found.

Study those debates, and you will find that the men who talked understandingly upon the subject—and I say that very respectfully to everybody—proceeded upon the theory that the law was to give to the judges their actual expenses, not more.

Mr. Chandler, of New Hampshire, a Senator in this body at the time when one of the colloquies took place, largely participated in by the honorable Senator from Iowa [Mr. Allison] and by Senator Allen, of Nebraska, asked Senator Allen rather sharply whether he meant to intimate that there was any judge in the United States who took \$10 a day unless he actually expended it.

The Senator from Iowa, who had the bill in charge, showed very clearly and very distinctly by what he said upon that occasion what he understood the law to mean. The real question was, so far as the debate in the Senate went, as to whether there ought to be restored something like the old requirement that the judges detail their expenses. There was a disposition, and a proper one, I think—at least that prevailed in the view of the Senate and the House—not to make that requirement. But the requirement of limiting them to \$10 a day and providing for the payment of their actual expenses, and nothing but their actual expenses, remained and remains now.

I am willing to submit this matter—the managers are willing to submit it—upon the naked matter of law on which the respondent has chosen to stand. His counsel have argued, however, that the charge has not been proven.

It is established by the evidence that this judge did not expend \$10 a day. We have proved what the traveling expenses were, if he had paid his fare, which he did not do. We have proved what his hotel bills were. We have proved the ordinary expenses, the very kind of expenses, and all the expenses that were mentioned in the debates as constituting the expenses of the Judge for which this allowance, not to exceed \$10 a day, was to be made. It would have been very easy indeed, if there had been other legitimate expenses, for the respondent to have proved them, and not having proven them, it passes, it seems to me, the bounds of human reason to reach the conclusion that they existed.

But the honorable counsel proceeds further. He says it must have been known to the Judge and to the district attorney, to the people in the neighborhood generally, that in a comparatively small place like Waco, Tex., and Tyler, Tex., a judge, of course, did not spend anything like \$10 a day.

He argues at one point that we have not proven that he did not spend \$10 a day, and at another point he insists not only that he did not, but that everybody must have known it. And then he says that the marshal must have known it; that the marshal ought to have passed upon the accounts of the Judge. A certificate, the form of which is in the record, was furnished the Judge from the Treasury Department. In the use of that certificate he certified what his expenses were. He was required to do it.

Then the marshal ought to have proceeded, I suppose, in review. The marshal ought to have organized himself into some sort of a tribunal, not provided by the law, but suggested by ingenious counsel, and said: "Judge, I believe I will swear you about this matter. I will just look into this. Before I can pass on this, although the law com-

pels me to pay it, I will examine you and cross-examine you and see if you have not been lying about it." It is asking too much of the marshal. It is asking a little too much of anybody. The law required the Judge to certify the amount of his expenses; required the marshal to pay them; required that the marshal should receive credit in the settlement of his accounts for the amount he did pay in that way.

Then how stands the matter with reference to these three articles? The law provided for giving the Judge his expenses, not to exceed \$10 a day; his expenses, not \$10 a day; his expenses, with that as the limit. If they ran beyond \$10 a day, he was not to have more than \$10 a day. The Judge certified that his expenses were \$10 a day. The marshal paid the expenses as he had to do, as the Judge certified, and got credit upon his accounts, as under the law the accounting officers are compelled to give him credit.

The Judge did not spend that money. The Judge did not think he had expended that money. The Judge knew he had not expended that amount. The Judge made a false certificate, expressly forbidden in the statute. The provision is in the record. And by means of that false certificate and false statement he received \$10 a day. I would not have used the term myself, for I do not care to be harsh, or unnecessarily harsh, in this matter, but I can not express the thought more aptly than the learned counsel for the respondent did when he said that it amounted in our charge, as it amounts in fact, to larceny. If that is not impeachable, acquit because it is not.

Take the matter of residence. The respondent, in his answer, makes it very clear that he did not reside in his district for the period of at least six years. I will read that paragraph. I do not want to do any injustice to the respondent.

The respondent further says that his residence now is in Pensacola, in the northern district of Florida, and that such residence began shortly after the passage of the act of July 23, 1894, which excluded from said district St. Augustine, his previous residence, and has continued down to the present time, his local abode now being at No. 13 West La Rua street, Pensacola, where he has resided since October 1, 1903; and he says his local abode prior to October 1, 1903, and from and after October 1, 1900, was in the Simmons cottage on Belmont street, Pensacola; and that his local abode prior to October 1, 1900, and from and after the beginning of his residence in Pensacola, was at times at the Escambia Hotel and at times at the boarding house of Capt. William H. Northrop on West Gregory street in said city.

All the residence from 1894 until 1900 to which he makes a pretense in his answer is the sort of residence which every drummer has in every town he visits; which every juryman who attends a court in a county town has in that county town; which I could have in New York by going over there to-morrow and coming back the day after; the residence of the wayfarer and sojourner in the land. According to his own statement, according to the testimony, overwhelming, undenied, and undeniable, he had no residence in the northern district of Florida for more than six years.

Now, there is no escape from that, as a matter of fact. There is no pretense that it is not true, as a matter of fact. There can be no pretense that it is not true, as a matter of fact. The law, plain and distinct as any law can be, a law more than ninety years old, provides that a judge must reside in his district, and that if he does not he is guilty of a "high misdemeanor."

Then, in asking for the removal of this judge from office, are we invoking stern justice from some dark age? Are we invoking justice

with eyes blinded and heart filled with malice and brain clouded, or are we invoking the justice of this magnificent age in the world's progress; the justice of enlightenment, the justice of knowledge, the justice that will not lose sight of the people of a great district in order to shield from his just deserts the man who has been their oppressor?

Now, as to the wisdom of this law, it is not necessary for me to argue. The wisdom of it, the propriety of it, the wholesomeness of it, it seems to me, every man ought to concede. But there it is the law. While you can not remove a judge except by this power of impeachment, while he is anchored beyond all the storms that beat and all the waves that roll, and can not be removed except by the action of this body, after suitable action by the House of Representatives—while that is true, there is nothing in the Constitution that prevents a judge from vacating his office.

Judge Swayne could have quit the office. Judge Swayne could have resented this "outrage" perpetrated upon him, as is suggested in a vague way by his counsel, when the lines of his district were changed. Judge Swayne could have thrown up the office and resumed that work which, according to counsel, he accomplished so magnificently, of climbing up and up the steep mountain until again he might have been upon the pinnacle of it.

But he did not do it; and not having done it, I put it to the Senate straight and plain, Judge Swayne not having lived in the district for six long years, having violated and despised and spat upon the law, is it not asking a good deal of you to ask you to acquit him?

On what ground shall you acquit him? If you do acquit him of that charge, will you say that this law, which was passed by the men who served in this great body before you did, long years ago and generations ago, and who served in the other great body, whose representatives we are temporarily in this proceeding, is to have no binding effect upon you—that it amounts to nothing, that it has merely been permitted to slumber upon the statute books through these generations, finally to be drawn up and in the most solemn manner, in the greatest legislative body upon earth, declared worthless and of no binding effect? Are you going to declare that? You are asked to do it when you are asked to acquit upon this charge. Are you going to declare that against evidence undeniable and undenied, against open and direct evidence of nonresidence, not casual, not accidental, but prolonged, predetermined, continuous—are you going to declare that?

You were told in an ingenious argument by one of the eminent counsel for the respondent that this provision of the law does not require Judge Swayne's family to live at the place of his residence, and because of that he need not have in his district a "coop" and thus be prepared to gather in the "chickens." These chickens were scattered far and wide over the face of the earth. The flock was not so very large—three of them.

One, according to his own testimony, left home and went to college in 1891, and immediately after his graduation married and set up a family altar of his own. Another, a few years later, left home to attend college. That accounts for the two boys. They had found a coop somewhere else. There is nothing said about the wife and the daughter, but what a desperate undertaking that must have been to find a residence somewhere in all that great land of flowers, in all that land of oranges, where the breezes are supposed to be laden with

odors from spice groves and where eternal summer is supposed to abide.

In the difficulty of finding a residence with a parlor 40 feet wide and long and no pillars appeared a plain omission in the statute. The statute should require the judge to live in his district provided he can find in it a parlor to suit him, but if he does not the law shall not apply.

But, Mr. President and gentlemen of the great Senate of the United States, it seems to me it is a waste of time to argue longer upon this proposition. We have made, and the respondent admits that we have made, with respect to this article, our case complete. It is now with you to say whether you will enforce the law or whether against the law and the fact you will turn this man loose.

The Davis and Belden case naturally comes in for some comment. Let us look over the history of that case for a few moments. It seems that there had been pending from time to time in the State courts, and to some extent in the United States courts, litigation about a valuable tract of land in the city of Pensacola, this city where the Judge could not find a home in six years. A suit was brought in the name of Florida McGuire as plaintiff against certain parties for about 265 or 270 acres of land in that city. That suit was pending in the court over which Judge Swayne presided. Along in the summer of 1901 Judge Swayne negotiated with an agent representing the owner for the purchase of a portion of that land, known as "block 91."

At the time he went out to view the land, and when the negotiations were in progress, and when the deal was made, Judge Swayne said to the agent of the other party: "If I buy this it will disqualify me from sitting in the trial of the Florida McGuire case." Did he say that, in substance, or did he not say it? Mr. Hooten, the agent, swore positively that he did, and nobody denies it.

With the ready facility which counsel for the respondent have shown for finding perjurers here, there, and everywhere, are you going to sweep this man off his feet, and sweep his testimony out of the record, on the ground that he, too, is a perjurer? I take it you will not. I take it that the ordinary instincts of decent humanity revolt at branding a man as a perjurer when there is nothing inconsistent in the story he tells, and, when, with ample opportunity at command to contradict it, there is no denial of it. I take it as a fact, and I am warranted in taking it as a fact, because it is proven and its correctness is not questioned.

Now, then, in the summer of 1901, Judge Swayne, knowing that block 91 was embraced in the tract of land for which suit had been brought in his court by Florida McGuire, against a number of defendants, deliberately made a contract for the purchase of that lot. If time were abundant one might pause for a moment to comment upon that performance. Here is a judge for life, with at least a reasonable salary, in a court which has not much business.

Here is a case involving a million dollars' worth of property, a considerable thing in a community like that of Pensacola, I take it, deliberately bargaining with the agents, one of whom is a party in that suit, a party defendant, for the purchase of a piece of land alleged to belong, to another party defendant, doing it with his eyes open and saying "If I buy this it will render me incompetent to try the case, and there will have to be another judge called in." Now, I think there are judges, I hope there are, who would not engage in negotiations about the subject-matter of litigation in their court. Judge Swayne did.

The plaintiffs in that case heard of the transaction, and Mr. Paquet and Mr. Belden, who were the plaintiff's counsel, wrote to Judge Swayne, calling his attention to the fact that they had heard of his dealing for a portion of this property and asking him to write to Judge Pardee, that Judge Pardee, the circuit judge in that circuit, might send in some disinterested judge to try the case. Mr. Belden says that letter was written in August. At all events, it was written a considerable time before the court met. There was no answer to the letter, no suggestion to Judge Pardee to send in a judge who had not been dealing for the property, the purchase of which, according to Judge Swayne himself, would disqualify him from sitting in the case.

Court time arrived, and then arrived Judge Swayne, the alien. He did not live there. The stranger judge dropped in as a drummer might drop in to attend to particular business on his rounds. Judge Swayne dropped in and opened court. On the first day, it is said, he made a statement in regard to this matter. He said that a quitclaim deed had been sent to him; that he would not take a quitclaim deed; that the whole matter had dropped and he did not have any interest; that the negotiation had been by a member of his family. Later on the Judge disclosed that the member of his family with whom the deal was made was his wife.

Criminal business went on and Saturday night approached. The case of Florida McGuire against the Pensacola City Company and others was called. The attorneys for the defendant were ready, but the attorneys for the plaintiff were not. The case had not been set down for trial. There is no dispute about that. Everybody who testifies about it admits it. It had not been set down for trial for any particular day. The parties were expecting to try it and expecting to get ready to try it.

It is testified by Mr. Marsh, the clerk, that it was the custom of the court to set cases down for trial upon a particular day when the parties agreed to it, providing so doing did not lead to detaining the jury an unreasonable length of time. I think that almost any lawyer will conclude that when a case is not set down for trial for a particular day nobody is authorized to summon witnesses for a particular day, and that if any party does summon witnesses for a day before the time when the case is taken up for trial, upon consideration of the taxing of costs he himself will have to pay for the attendance of those witnesses.

Now, there was nothing unreasonable in asking that that case be set down for trial at a time to which the plaintiffs could summon their witnesses. The plaintiffs were not authorized to summon their witnesses. They had no right to summon them to any particular day, and they knew not to what day to summon them. That stands admitted and is beyond the possibility of dispute. They asked that the case be set down for trial upon the ensuing Thursday. The defendant's attorney objected to it.

The Judge announced that the case had to go to trial on Monday morning unless continued for cause. Now, the plaintiffs asked no continuance. They asked simply a postponement. There was no suggestion that Thursday was too far off; that Tuesday or Wednesday might answer equally well. "Monday morning try or continue;" that was the ultimatum of the Judge. The attorneys after the adjournment of the court concluded to dismiss the case.

Now, counsel for respondent raises a question about that and says that hearing on Sunday that there would be contempt proceedings

against them they then concluded to dismiss the case. That is a gratuitous statement, entirely gratuitous, for there is not an atom of testimony, not an intimation in the evidence upon which that statement could be rested. The evidence uncontradicted is that they decided Saturday evening after the adjournment of the court to dismiss that case. I challenge anybody to find in the record any contradiction of that.

They decided also, after deciding to dismiss the case, to bring a suit against Judge Swayne in the State court of Escambia County, being the county in which the city of Pensacola is situated; and then began, in the estimation of Judge Swayne, their great sinning. They did bring the suit. They had the clerk looked up, had the proper papers issued, had Judge Swayne summoned that night. There is the commencement of the great offending.

But who were the attorneys in this Florida McGuire case in the Federal court? Counsel say it is very evident that Davis was an attorney; he was seen counseling with Paquet, seen counseling with Belden, seen around about there, and had no other business in court; that it is very evident indeed that Davis was an attorney. Was he or was he not? He swore that he was not. Belden swore that he was not. Pryor, the man who employed the attorneys and had the management of that matter for the plaintiff, swore that he was not. And who swears that he was? Why, Marsh guesses from appearances that he was an attorney, and Blount presumes to assume or to guess from appearances that he was an attorney in the case.

Now, let us go a little further in that. I appeal to your common intelligence and your common experience in life to say as an absolute fact, as a conclusion as to the correctness of which there can be no doubt, that he was not an attorney. Davis was a young man and a young lawyer. He had lived in that city about a year. He was a stranger in a strange community, presumably with a comparatively small practice—with no practice in that court at that time. On Sunday morning Paquet, getting a telegram calling him home on account of the sickness of some member of his family, asked Mr. Davis to appear for him and have the case of Florida McGuire against the Pensacola City Company and others, in Judge Swayne's court, dismissed.

Promptly Monday morning, upon the opening of court, Davis had himself noted upon the docket as one of the attorneys. Davis, an attorney all through the week, a stranger in a strange city, a young man with comparatively small practice, concealed the fact that he was an attorney, kept everybody from knowing it, not allowing himself to get the benefit of the advertisement which would come from the noting of his name upon the docket as one of the attorneys in this million-dollar suit.

And then fearful, frightened on account of these contempt proceedings, on Sunday they decided to dismiss this case, says the eloquent counsel for the respondent. Yet affrighted because they were going to be proceeded against in the court of this kindly judge, Davis rushes in Monday morning and connects himself with the case with which he had no connection before. A remarkable lot of things must have transpired. Human nature must have been running in strange channels in a good many people there besides Judge Swayne, if these things can be true. If they are not true, Davis was not an attorney. The testimony shows that he was not an attorney until months afterwards,

when the Florida McGuire case was brought again in Judge Swayne's court. So much for that branch of it.

Mr. William A. Blount says he would go to Paquet and talk to Paquet about when they probably would reach their case. The very fact that he did talk to him about when it would be reached shows conclusively, even beyond his own story, that there could be no sense in any man subpoenaing witnesses for a particular day. When he would go and talk to Paquet, Davis, he says, would be there consulting Paquet; and then when he was asked about what Davis said he could not recollect a thing. When he was asked about what Paquet said he could not recollect a thing.

This William A. Blount, we understand from the counsel for the respondent, is an honor to the profession and a glory to the Southland, a land that has been prolific, as counsel truly says, in the production of lawyers and statesmen and warriors, of men good and brave and true; and at the head and front of all, as the ages march along, is to be placed this William A. Blount. Let us have William A. Blount stand out here in the presence of the Senate and in the presence of the country, as he stood out when he was upon the witness stand. Let us have him appear as he appeared, and not as counsel would have him appear.

He was asked, not by a manager—for, swearing on the other side, he might have a certain degree of resentment toward the manager or a certain disposition to shield or guard himself against the question—but asked by one of the honorable members of your own body, to state whether Judge Swayne when he sentenced Belden and Davis showed anger or resentment. He could not answer that without giving his opinion. Do you believe that is true? If you are observing a man, can you tell whether he shows anger or resentment?

It was not a question as to whether the Judge ought to show anger or resentment; it was not a question as to whether if he did show any he showed too much; but did he show anger or resentment in pronouncing this sentence? He can not answer that unless he gives his opinion. Of course objection was made to giving his opinions, because he had been giving his opinion by his action in that contempt proceeding. But later on he manages to get in his opinion, and he says that, according to his opinion, the Judge was not any more severe than he should be.

He was asked again, by another Senator, at another time, whether or not when he took this office of "attorney for the court," and that is most aptly phrased in this particular case, for attorney for the court he was—he was asked by another Senator whether, when he took this office as attorney for the court in these proceedings, he inaugurated this contempt proceeding in order to vindicate the bar or to protect the bar and the court, or whether he did it because he was a defendant and counsel for other defendants in the Florida McGuire case.

Then this magnificent leader of Southern thought, this splendid representative of Southern chivalry, as the gentleman would have us understand, showed considerable resentment. What did he say about it? He said if he knew himself he thought he did it to protect the bar by having them punished. Then he goes on to say that he did not fear them. No, sir; he did not fear these three lawyers; that if he had been selecting attorneys to oppose him his choice would have fallen upon the three. That was not responsive to anything asked

him, not explanatory of anything involved in the question or in the real answer to the question, but vastly explanatory of the feeling, of the animus, of the bitterness and hatred of this exemplary man, Mr. William A. Blount.

At another stage of the proceedings, and not in answer to any question, but as a volunteer statement, born of his spleen and hatred and his desire to shield and protect the Judge against harm for venting the Judge's spleen and his spleen, he said he had won all the other cases and he certainly expected to win this. I suppose he was opposed to a discontinuance or a dismissal. He said, referring back as well as he could to his state of mind at that time, that he was rather inclined to believe that he preferred to have them try it, that he had won all the other cases relating to the same matter and he expected to win this.

Of course I can not go into a comparison of the relative merits of the lawyers who have figured in this case, and it is not material to the issue now before the Senate upon which the Senate is to pass, whether this William A. Blount is a great and a good man and a great and good lawyer, or whether he is not. If I wished or hoped to stand in history as a good man or a great lawyer, I would pray the good God above me to preserve and keep me from ever furnishing such evidence of my goodness or my greatness as William A. Blount furnished when he was upon the stand as a witness.

Look at the unseemly character of that whole proceeding. Who is Blount? A party largely interested in this litigation, counsel for other parties in this litigation, summoned by Judge Swayne over the telephone on Sunday to consult about the bringing of this State court suit, who says to the Judge that it savored to him of contempt. Of course it savored to him of contempt.

But before we go to that let us look at the conduct of the Judge in refusing to recuse himself. That has not been commented upon very much. There are men here who were judges before they were Senators and others who were lawyers before they came to the Senate, and who are lawyers and judges still. You are all judges here now in this proceeding, whether you be of the legal profession or of any other calling in life.

I ask what one of you, proud of his honor and standing as a man, proud of his reputation, careful to guard against the imputation of dishonor—what one of you, after having dealt with a subject-matter of litigation, even without objection by either party, much more on request by either party to stand aside, would have taken the bench, where justice ought to be administered impartially, where there ought to be neither fear nor favor, where the scales of justice ought to be held with a steady hand? What one of you would take the bench in litigation of vast moment to many people, and would pass upon the matters that you had passed upon tentatively, at least, in your negotiations for a portion of the subject-matter of the litigation?

In the very nature of things Judge Swayne must have known, and did know, something about the title to that tract of land. He had been negotiating for the purchase of that land from Edgar, who was a defendant in that Florida McGuire suit, although he had not been summoned, it is true. Judge Swayne had determined that he would take the title that Edgar had, the very title that he was to pass upon if he sat upon that bench, the very title in question in that litigation—

he had determined that he would take it; and the only reason he did not take the property and receive the deed was because Edgar did not make a warranty deed instead of a quitclaim deed.

Now, then, I say in decency, man with man, according to the ethics of the profession, according to the principles of honor and manhood which prevail in all decent ranks of society, ought not this judge to have stepped aside, and gladly stepped aside? Was there anything asked of him except what he ought to have done? Ought he not to have stepped aside without being asked to do it? Why did he not step aside? I can not answer entirely.

Why were the defendants so particularly anxious, so extremely anxious, to have him try the case—a man who had already tried it off the bench by determining to his satisfaction that the title of the defendant was good enough for him, with a warranty deed—why was this good William A. Blount not willing to have another judge come in? Did he suppose that the other judge would not bring to the bench the deep and profound learning with which the usual occupant graced it? Did he suppose that the other judge would come ignorant of the law, while this judge was learned?

Did he suppose that the other judge would lean to the other side, coming in a stranger, knowing nothing about the litigation, having no association with the litigants, not depending upon any of them, not calling upon any of them to do anything for him? No! It stands out clear as sunlight; it stands out as distinct as a peak of our great mountain range in the rare air of the far West, that the defendants desired this judge to pass upon the title which he had already passed upon. Aye, they could win cases with that kind of judges upon the bench; they could get decisions from a judge who had already decided in their favor!

It is in evidence here that their decisions were obtained from State judges disqualified by relationship to the parties in the suit—brothers-in-law and other relatives. With that kind of judges, in that sort of courts, this ill-mannered, gratuitous boast of this great William A. Blount might with safety be made, that he had won all the suits before, and he did not fear these people.

If I were to institute a comparison—it is not necessary to do it—but if I were called upon to institute a comparison between this William A. Blount and old General Belden—and I know absolutely nothing about either of them, except that which I have seen and learned since this impeachment proceeding began—I do not know but that I should at once prefer Belden of all the attorneys that could be selected to represent the side of an antagonist. I do not know.

It seems to me that in his bearing he showed as much of the gentleman; he showed as much of innate breeding; he showed as much of acquired polish; he showed as much knowledge of the law, and as much readiness to answer questions fairly, coolly, calmly, and dispassionately as this mighty antagonist who had selected him for pulverization in the court of Judge Swayne. He could have selected anybody for pulverization there. That is not as rash a statement after all, perhaps, as at first blush it might appear to be.

There might have been selected for the plaintiff three of the greatest lawyers in the United States, but with Blount upon the side of the opposing party and Swayne upon the bench it might not be so rash,

after all, to say that another victory—a victory of the old kind, from disqualified and biased and prejudiced judges—might reasonably be expected, and might smilingly and pleasantly be predicted.

I do not know what the animus of Mr. Blount is. I do not know whether it is deep interest in this case or whether he is one of that kind of beings who sits upon a throne of his own erection, the pillars of which are his own imagination, and allows not any other pretender to knowledge of the law to approach except with bowed head and a pan of ashes. I do not know.

It may be it is political bias and prejudice; it may be that this State senator of Florida, seeing an opportunity of crushing Belden, a man who had chosen to adhere in storm and sunshine under the southern skies, down where the magnolia blooms, to the party of his choice, although it was not the party of the majority—it may be that he could not resist a mean instinct, possibly of a mean nature—I do not know how that is—to crush this man, to humiliate him, to disgrace him by making him lay his aged head and his weary frame within the narrow limits of a cell, from which probably a vile felon had just emerged and into which another vile felon, perhaps, would go when he vacated it. I do not know. It looks as though the effort was to crush out anybody that chose to push this claim of the Caro or Rivas heirs; it looks as though there was a combination to destroy anybody that interfered with the triumph of this man who had triumphed so often, this man who vaunts himself and is vaunted here as so great a lawyer.

It has been my observation in the slight experience I have had at the bar and in the courts that the great lawyer resorts to no such means; that the great lawyer rejoices, like the gladiator, in the manly contest in the open forum; that he admires the ability and learning of his opponent; that he presses his case by the power of learning and the force of intellect for all that it is worth, and that he leaves to the shyster who haunts courts where drunks, toughs, and vagrants are gathered before the police judge to pursue a different course.

These gentlemen, Paquet and Belden, concluded to dismiss that case in the Federal court, and they brought suit against Swayne. Did they have a right to bring it? The statute of Florida, which I had read here and which is in the record, distinctly and plainly provides for such a suit as that brought against Swayne. The case that was brought anew in Swayne's court was an ejectment case. The testimony here is that a large part of that land was vacant, and the suit was against a number of defendants.

Under the Florida statute, when an ejectment suit is brought the plea of "not guilty" puts the whole matter in issue. If you choose to raise the question of possession it is done by a special plea. Why a special plea to raise the question of possession if an ejectment suit can not be brought in a case of this kind? The learned lawyer from Pensacola, who was lawyer and client and friend of the court and persecutor of his brother attorneys, did not in his exposition of law or of fact inject as his opinion, even out of order, any notion to the effect that that sort of a suit could not be brought and could not be maintained under the Florida statute.

Belden says that he believed the suit could be brought and could be maintained. They wanted to try it out and determine Swayne's interest. Respondent's counsel say that suing Charles Swayne was virtually calling Judge Swayne a liar. That is the statement. Rude and harsh

it may have been, questioning whether the Judge had told precisely the unvarnished truth. As a matter of fact, by the Judge's own statement, the Judge himself proves that he did not tell it, and does not tell it, in regard to these matters.

Take the statement that he finally spread on the record on the 11th day of November, 1901, when these contempt proceedings were begun. There is not an atom of truth in it. According to the testimony and according to other statements the deed was not sent to him; he did not break off the transaction on account of finding out that the land was involved in this litigation, because he knew it before, and he dealt with it expressly knowing it.

Suppose these lawyers did have some question as to whether the statement of the Judge was exactly accurate; suppose they thought there might be some meaning in the concluding lines of this letter of the agent to the Judge, "We will take it up with you when you return to your home"—it seems finally, according to the idea of the agent, that Judge Swayne had a home there in 1901, after being an alien and a wanderer for six or seven years—they would take it up with him then. I do not know whether or not it was taken up afterwards.

But what an offense to the Judge it would be to try to force him to recuse himself, to get him out of the case, which the testimony shows beyond the possibility of a doubt the attorneys had already determined to dismiss. To crowd Judge Swayne out of the case would touch the tender sensibilities of Judge Swayne, appeal to the pride of this judge who had none, appeal to sensibility where none existed, appeal to a regard for the proprieties where there was an absence of it.

There was no danger of anything of that kind happening. But the suit was brought again the following January or February, and by and by it was tried. Counsel for the plaintiff appeared before the judge and filed a petition asking him to recuse himself, to step off the bench, and asking him to permit them to introduce testimony in support of their petition. He did not do it, and he would not do it. But after he disposed of the matter, after they were out of court, after they had no opportunity for hearing, he spread upon his own record an ex parte affidavit which he had himself procured of somebody to support what he must have felt was insupportable and otherwise unsupported.

Talk about getting that kind of a man off the bench! If Blount had allowed Judge Swayne to go off the bench he would have taken the chances of breaking this magnificent record to which he expected to add another victory—taking chances upon a judge not under his thumb, not under his influence, not a judge whose dirty work, as Mr. Manager Palmer so fittingly said, he was called upon to do, and willingly did.

If this prosecution for contempt was to take place, what propriety was there in calling upon these parties and these attorneys in the case of Florida McGuire to institute and carry it forward? What propriety in it, what decency in it, in a judge or in an attorney? Think a moment about it. Is that what any one of you would have done upon the bench? Would you not openly and in a manly way have made your own statement from the bench if you had seen proper to do it, or would you not have called in the district attorney, or some other attorney of high standing and totally disconnected with the entire proceeding?

Would you not have felt that your own reputation for fairness, your own standing for decency as a judge would be impaired if you did not

do it? Would you not have done it? Who but Judge Swayne would not have done it? What other judge would have been so lost to a sense of propriety, so callous as not to have called in some disinterested party? Where in all that Southland, of which the people who live in it have just reason to be proud, and of which the people of the country have just reason to be proud—where in all that Southland could have been found two other attorneys and two other parties who would have lent themselves as “attorneys of the court” in the prosecution of this contempt proceeding?

The counsel for the respondent asked for no pity, and asked for no mercy for his client. He says all he wants is simple justice, and he paints a beautiful picture—which would be far more real if the original were not present—of the benignant countenance, the kindly ways, the clear beaming eye, the purity of purpose, and the loftiness of intention of that client of his. But that party was not around in the business of mercy or of pity or of justice when Belden and Davis were brought up.

Now, I say, first, that the judge ought to have recused himself; that fairness required it; that decency required it; that regard for judicial ethics, as it seems to me, required it; that asking him to do so was proper, and refusing to do so was grossly improper. Next, that there was a complete right to sue him. He had no right to find fault with it. It could not have taken him off the bench, because he demonstrated that nothing could take him off the bench. Nothing but this Senate can take him off the bench.

Protect the dignity of the court! How? By arresting those who sue the judge and putting them into jail with common felons? Thus protect the dignity of the court! Is that the way the dignity of courts is protected? What, after all, is the protection about judges, about courts, about you, gentlemen, and about all of us? Far beyond the strong arm of the law, far beyond the terms of any statute, is the shield and the protection of the respect of the community in which you may live—the shield and protection which upright conduct throws around the man whose crown and whose glory such conduct is.

Protect a court by resorting to the methods of a tyrant! Protect a court by striking down people in their dearest rights! Protect a court by violating the right of a citizen to liberty and to have a fair trial! So I say with regard to these men themselves who were the attorneys in the case, with regard to when they were employed, with regard to the bringing of this suit, with regard to everything about it, there is nothing to reflect upon the court except what the court itself did, and there is nothing which these men did which they had not a right to do.

Under the statute of 1831, section 725 of the Revised Statutes, even if you conclude that what the attorneys did was wrong—I do not care how bad you think their action was, though I think it was justifiable and right—but taking the opposite view, if you choose, I say that under the statute of 1831 there was absolutely no power in the court to summarily punish Davis and Belden for contempt.

Was their conduct misbehavior in the presence of the court or so near thereto as to disturb the administration of justice? That is defined by Judge Baldwin, although it needs no definition, and by other able jurists, as meaning such disturbance as would arise from noise or disorderly conduct, such a disturbance as might arise in this Chamber by some one making a noise or by people getting into an

affray. It might be a case of disturbance outside there [indicating] or there [indicating], a disturbance that interferes with the business of this court in the administration of justice here. Was there that? Certainly not. It is an insult to human reason to pretend that there was; and yet that seems to be what they proceeded upon, so far as they proceeded upon anything.

The next clause is as to the misconduct of officers of the court in their official transactions. What was the official transaction of Davis or Belden on account of which they were punished? What official transaction? Perhaps it is not a wise rule, but it is a rule in a good many States, that an attorney from a neighboring State, no matter how eminent or how long in practice or how well known generally, can not practice in that particular State unless he undergoes examination and is regularly admitted to the bar, as a neophyte may be.

Suppose that had been the case in Florida—I do not know whether it is or not—suppose it had been, and these gentlemen had gone to the Florida court to bring their suit, and said that they proposed to file their petition in court, and the Judge had asked, “Are you gentlemen members of the bar of Florida?” Suppose they had said, “No, your honor, we are not members of the bar of Florida; we are members of the bar of the northern district of Florida, that great United States district court presided over by his honor, Judge Swayne, and in the exercise of our functions as officers of that court and as an official transaction by the officers of that court we demand the right to file this paper and proceed in this suit.”

I suppose they would have gone on with it, would they? Davis and Belden brought the suit as officers of the court of Florida, and not as officers of the court over which Judge Swayne presided. It was not in any sense an official transaction of officers of Swayne’s court. I defy anybody to point out anything they did in regard to the bringing of that suit that was done by an officer of the court of the northern district of Florida.

The circumstance that a man is a member of the bar of the United States court of the northern district of Florida and a member also of the Florida bar does not make every act done in one court an official act of an attorney of the other court; it does not make any act done in one court the official act of the attorney of the other court. As attorneys of the circuit court of Escambia County, Fla., they had whatever official transactions they had at all in and about the bringing of that suit against Swayne.

But, so far as the testimony appears to go, the real cause of that complaint was the publication of a newspaper article. That newspaper article, as has been shown by the testimony—and it was shown by the testimony that it was known to the judge then and there—was prepared by Paquet. Davis and Belden had nothing to do with it and knew nothing about it. But, say counsel for the respondent, they had opportunity to get witnesses; they did not ask for a continuance, and they could have had more time. I think they could not have had. I think the kind judge was itching to have them hurried off to jail.

But, waiving that question, there is testimony—and there is no doubt about it, for witnesses upon both sides have testified to it, and nobody contradicts the testimony—which showed that Pryor carried to a newspaper office an article which was shown to be in the handwriting of Paquet; that that article was published, and that that article announced

the beginning of a suit against Judge Charles Swayne in the circuit court of Escambia County, Fla. That is what that showed. There is no testimony that Davis or Belden did anything which constitutes any contempt; there is no evidence that they violated any part or parcel of this law under which only the Judge could act.

Then there was an illegal sentence passed upon them. With the statute book lying there for the judge to look at he did not even look at the book. Marsh says it was at hand. What difference about the law? There was no waste of time to look into the statutes; away with them, away with them to a cell in the old jail!

Now, in the O'Neal case it is shown that the law was directly, as it was also in the other case—because Mr. Davis called attention to it—that the law was directly called to the attention of the judge, and the decisions of the courts construing it and declaring it were read to him, and with knowledge, with the facts forced upon him, with the law there and the facts there, he deliberately, willfully, wickedly, and meanly violated the law again as he did before.

O'Neal committed no contempt of court; but whether he committed any offense or not was a matter to be tried elsewhere, in another proceeding. He committed no contempt of court; he obstructed no officer; he refused obedience to no mandate or order or decree of the court. He did not disturb the court; he was no officer of the court and could not have done anything in his official transactions as such. He got into a quarrel and into a fight with a trustee in bankruptcy; but, ah! the bankrupt courts are always open! A court of bankruptcy is eternally open like the doors of a celebrated temple, open all the time; and therefore it was contempt of court, because there was an interference with the administration of justice in that bankrupt court, which was always open. I would insult the intelligence of the Senate if I were to argue a proposition so manifestly absurd.

There was no contempt of the court in any particular in this matter and the judge tried it—I was about to say as a justice of the peace would have tried it, but if there is any justice of the peace within hearing, I certainly should beg pardon of him and except him from the general statement—he tried it as a matter of assault. He tried it upon the credibility of the witnesses, with no question of reasonable doubt, with no mercy.

Ah, this judge had no respect for struggling youth and no pity for age in its affliction. If you remove him from office, what wrong could you do? None. If you leave him in office, what wrongs do you inflict upon the people who must suffer from his maladministration of office? You can not tell. I can not tell. The God of omniscience only can know. A weak, vain, vicious judge; a cruel, vengeful, unrelenting judge; a judge not broad enough to comprehend justice; a judge not well enough disposed to try to learn what the law is; a judge not intending to do justice! Ah, Mr. President, must it be made a terror to men to do anything or fail to do anything contrary to the wishes of this august judge?

There can be done in this Senate that which will be of vast worth to the nation, vast worth to the judiciary of the land, vast worth to the people of that Florida district, vast honor and vast glory to the membership of this great body; and there can be done that which will be precisely the reverse, as I see it. No wrong will be done to this judge

in removing him from office. If you choose not to disqualify him for other office of trust or honor, let him have his chance.

I care nothing about that. But the people of that district, the long-suffering, injured people, are calling loud for his removal. They are looking intently to this body now; they are hoping and praying that here that justice, denied so long and so often, may find its expression in the judgment of this great court. Those who made the Constitution made this the greatest court in the land, the greatest court in all the wide world, and nothing but itself can ever make it less. The court that tries courts; the judge of judges.

There is no escape from these tyrannies except by coming here. Impeachments are not things of everyday occurrence. They do not come up lightly. They come only perhaps once in a generation. In this body now, if I am not in error, there are three Senators, well known to the country for their long services in this body, who have heretofore participated in impeachment trials—one in the impeachment trial of Andrew Johnson, President of the United States in 1868, and two of them in the impeachment trial of General Belknap, some years later. It may be that an impeachment case will not again come before this great body when any of the members who now honor and grace it and add to the glory of the nation will be a member of it. It may be that even the youngest of you will have been gathered to his fathers before another solemn trial like this is held in this great Chamber.

There is no danger that by your judgment of removal you will precipitate an avalanche of impeachments, but there is danger that by a failure to remove when there is complete proof that there ought to be removal, as it seems to me and seems to us, you will add to the tyranny of judges. You will give the weak judge license. An opinion was read here from a court in Alabama that has not a line of law in it, not a line of which can be supported according to the authorities that are authorities. You will give license to lawless judges to prey upon a defenseless community under the sanction of law.

Out of the experience and the discussion of the Peck case came this act of 1831; an act ripe with age; an act that has stood the test of time; an act that no man has sought to sweep away until this trial came up and its exigencies demanded its elimination. Out of that great trial, in which veritable giants participated, came this law.

Then it was claimed upon one side that the power of the court over punishment for contempts was unlimited; the judge was the judge, and what he did was the law. He had the power and the right to do what seemed to him proper to do for the protection of his court. In order to define what contempts could be punished in a summary way, denying to the accused the trial, guaranteed by the Constitution, before a jury of his peers, denying to him the opportunity for fair, honorable, legal defense, they sought by the act of 1831, which all the wisdom of the succeeding years has not thought it proper to amend, to define and prescribe and circumscribe this law with relation to contempt; and there it is, and there it ought to be.

Whoever violates the lawful order, decree, judgment, or command of a court may be punished under that statute summarily.

Whatever officer of the court in his official transactions is guilty of misbehavior may be so punished by the court; whoever by boisterous and disorderly conduct or noise or confusion disturbs the court, either

in its actual presence or so near thereto as to interfere with the administration of justice, may be punished in this summary way. But for all else, for everything else, the jury trial, ingrained, embedded, enduring as time, enduring almost as eternity in the jurisprudence of the English-speaking people, shall be preserved to the citizen, the greatest and the humblest, the most powerful and the weakest.

Gentlemen, you are passing now upon a matter of vast importance not only with reference to these particular people especially interested, the thousands who dwell in that land of flowers; not only of importance with respect to this judge, but of vast importance with respect to the country and important with respect to yourselves.

Human nature is so constituted and the human mind so operates that in judging another one judges himself. The judgment which you shall pronounce in this case will be not only a judgment as between the people of the United States, appearing without malice and without heat, by their representatives, discharging a great constitutional duty, upon the one side, and Charles Swayne upon the other, but it will also be a judgment upon yourselves and upon each one of you individually. A crime proven and condoned is a crime shared!

We have nothing of malice against this man, a stranger to us; in his range of duties, in his field of operations, far removed from that in which we are concerned. But as citizens of this great Republic, as representatives for the time being of the people of the United States, speaking with the voice of the House of Representatives, we have the right to demand, we do demand, that this highest court in the land, this court made and appointed for just such a purpose as this, shall pronounce upon that man the judgment which he deserves—removal from his office. Then will the judiciary be vindicated; then will the judiciary like a beautiful tree increase in vigor and beauty with the lopping off of a dead limb. Then will the symmetry of the judicial establishment be greater than before. Then will the blots and stains be rubbed out and wiped away.

Acquit, and men may say that you acquitted because other judges are guilty. It has been intimated here by counsel that other judges are guilty of some of the charges preferred against this judge. I repel that charge. I repel it as the Senator from New Hampshire, Mr. Chandler, did when he thought what the Senator from Nebraska, Mr. Allen, said might be construed to mean that Federal judges had violated the law—had stolen from the people of the United States. I resent it, and I have a right to resent it. Let not the ermine that is clean and stainless, let not the characters that are pure and lofty, be sullied in order to let this man escape.

It is true he is along in years, but the man you will remove from office in pronouncing a just judgment upon him is ten years and more the junior of one of the men whom he, without law and without evidence, in the gratification of a mean, revengeful spirit, sent to the jail of the common felon.

He is not in a position to plead for mercy. He is not in a position to demand justice, because justice is his removal. Decency would have prompted his resignation. The last impeachment trial that took place in the Senate came to an end upon the ground that the accused had resigned and taken himself from office. No such graceful act by this judge, either before or after any particular event. There he is and there he will remain, unless you remove him, until in the lapse

of time there is that relief brought to the people which this court, if the verdict and judgment shall be in his favor, will surely deny them now.

Mr. FAIRBANKS. Mr. President, I move that the doors be closed and the Senate proceed to deliberate.

The motion was agreed to.

The managers on the part of the House, the respondent, and counsel for the respondent retired from the Chamber.

The Senate proceeded to deliberate with closed doors, and at the expiration of one hour and thirty-five minutes the doors were reopened.

While the doors were closed,

Mr. BACON submitted the following resolution; which was agreed to:

Resolved, That on Monday next, the 27th day of February, at 10 o'clock a. m., the Senate shall proceed to vote, without debate, on the several articles of impeachment. The Presiding Officer shall direct the Secretary to read the several articles of impeachment in their regular order. After the reading of each article the Presiding Officer shall put the question following: "Senators, how say you; is the respondent, Charles Swayne, guilty or not guilty as charged in this article?" The Secretary will proceed to call the roll for the response of Senators.

Whereupon, when his name is called, each Senator shall arise in his place and give his response "Guilty" or "Not guilty," and the Secretary shall record the same.

Resolved, That the Secretary notify the House of Representatives of the foregoing.

IN THE SENATE, *February 27, 1905.*

The PRESIDENT pro tempore. The hour of 10 o'clock having arrived, to which the Senate sitting in the impeachment trial adjourned, the Senator from Connecticut will please take the chair.

Mr. PLATT, of Connecticut, assumed the chair.

The PRESIDING OFFICER (Mr. Platt, of Connecticut). The Senate is now sitting in the impeachment trial of Charles Swayne. The Sergeant-at-Arms will make proclamation.

The Sergeant-at-Arms made the usual proclamation.

The PRESIDING OFFICER. The Sergeant-at-Arms will see if the managers on the part of the House are in attendance.

The managers on the part of the House (with the exception of Mr. Powers, of Massachusetts, and Mr. Perkins) appeared and were conducted to the seats assigned them.

The PRESIDING OFFICER. The Sergeant-at-Arms will see if the respondent and his counsel are in attendance.

Mr. Higgins and Mr. Thurston, the counsel for the respondent, entered the Chamber and took the seats assigned them.

The PRESIDING OFFICER. The Journal of the last trial day will be read.

The Journal of the proceedings of the Senate sitting for the trial of the impeachment of Charles Swayne Friday, February 24, was read.

The PRESIDING OFFICER. The Presiding Officer has noticed on former days of this trial that some persons having the privileges of the floor have occupied seats of Senators; but during this voting the Presiding Officer thinks that the seats of Senators should be occupied by Senators only, and will request the Sergeant-at-Arms to see that this suggestion is complied with.

The Presiding Officer desires to make one other suggestion. Applause, or any manifestation of applause, can not be permitted,

either on the floor or in the galleries; and if there is applause the Sergeant-at-Arms is directed to eject the person offending against the rules.

The Secretary will read the first article of impeachment exhibited by the House of Representatives against Charles Swayne.

The Secretary read the first article of impeachment, as follows:

ARTICLE 1. That the said Charles Swayne, at Waco, in the State of Texas, on the 20th day of April, 1897, being then and there a United States district judge in and for the northern district of Florida, did then and there, as said judge, make and present to R. M. Love, then and there being the United States marshal in and for the northern district of Texas, a false claim against the Government of the United States in the sum of \$230, then and there knowing said claim to be false, and for the purpose of obtaining payment of said false claim, did then and there, as said judge, make and use a certain false certificate, then and there knowing said certificate to be false, said certificate being in the words and figures following:

UNITED STATES OF AMERICA, *Northern District of Texas*, ss:

I, Charles Swayne, district judge of the United States for the northern district of Florida, do hereby certify that I was directed to and held court at the city of Waco, in the northern district of Texas, twenty-three days, commencing on the 20th day of April, 1897; also, that the time engaged in holding said court, and in going to and returning from the same, was twenty-three days, and that my reasonable expenses for travel and attendance amounted to the sum of two hundred and thirty dollars and ——— cents, which sum is justly due me for such attendance and travel.

CHAS. SWAYNE, *Judge*.

WACO, *May 15, 1897*.

Received of R. M. Love, United States marshal for the northern district of Texas, the sum of two hundred and thirty dollars and no cents, in full payment of the above account.
\$230.

CHAS. SWAYNE

when in truth and in fact, as the said Charles Swayne then and there well knew, there was then and there justly due the said Swayne from the Government of the United States and from said United States marshal a far less sum, whereby he has been guilty of a high crime and misdemeanor in his said office.

The PRESIDING OFFICER. Senators, how say you, is the respondent, Charles Swayne, guilty or not guilty as charged in this article? The Secretary will proceed to call the roll for the responses of Senators, and each Senator, as his name is called, will rise in his place and deliver his vote.

The Secretary proceeded to call the roll.

Mr. KNOX (when his name was called). Mr. President, for reasons which I shall assign at the conclusion of the roll call, I shall ask the Senate to excuse me from voting.

The roll call was concluded.

Mr. KNOX. Mr. President, having been prevented by illness from attending the sessions of the Senate sitting in this impeachment trial at which the testimony was produced, and also having been prevented by the effects of the illness from reading the testimony, I ask that the Senate may excuse me from voting upon this and all subsequent roll calls taken to ascertain the judgment of the Senate upon the charges against the respondent.

The PRESIDING OFFICER. Senators, you have heard the request of the Senator from Pennsylvania [Mr. Knox.] Those who would excuse him from voting will say "aye;" opposed, "no." [Putting the question.] The "ayes" have it. The Senator from Pennsylvania is excused.

The Secretary recapitulated the vote, as follows:

Guilty—Bacon, Bailey, Bard, Bate, Berry, Blackburn, Carmack, Clark, of Montana, Clay, Cockrell, Culberson, Daniel, Foster, of Louisiana, Gorman, Kittredge, Latimer, McCreary, McCumber, McEnery, McLaurin, Mallory, Martin, Money, Morgan, Nelson, Newlands, Overman, Patterson, Pettus, Simmons, Stone, Tallaferro, Teller—33.

Not guilty—Alger, Allee, Allison, Ankeny, Ball, Beveridge, Burnham, Burrows, Clapp, Clark, of Wyoming, Crane, Cullom, Depew, Dick, Dietrich, Dillingham, Dolliver, Dryden, Dubois, Elkins, Fairbanks, Foraker, Foster, of Washington, Frye, Fulton, Gallinger, Gamble, Gibson, Hale, Hansbrough, Heyburn, Hopkins, Kean, Kearns, Lodge, Long, McComas, Millard, Penrose, Perkins, Platt, of Connecticut, Platt, of New York, Proctor, Quarles, Scott, Smoot, Spooner, Stewart, Warren—49.

Absent or not voting—Clarke, of Arkansas, Knox, Wetmore—3.

The PRESIDING OFFICER. Senators, upon article 1 of the impeachment of Charles Swayne 33 Senators have voted "guilty" and 49 Senators have voted "not guilty." Less than two-thirds of the Senators present having voted "guilty," Charles Swayne, the respondent, stands acquitted of the charges contained in said first article. The Secretary will read the second article.

The Secretary read the second article, as follows:

ART. 2. That the said Charles Swayne, having been duly appointed, confirmed, and commissioned as judge of the United States in and for the northern district of Florida, entered upon the duties of his office, and while in the exercise of his office as judge, as aforesaid, the said Charles Swayne was entitled by law to be paid his reasonable expenses for travel and attendance when lawfully directed to hold court outside of the northern district of Florida, not to exceed \$10 per diem, to be paid upon his certificate by the United States marshal for the district in which the court was held, and was forbidden by law to receive compensation for such services. Yet the said Charles Swayne, well knowing these provisions, falsely certified that his reasonable expenses for travel and attendance were \$10 per diem while holding court at Tyler, Tex., twenty-four days commencing December 3, 1900, and seven days going to and returning from said Tyler, Tex., and received therefor from the Treasury of the United States, by the hand of John Grant, the United States marshal for the eastern district of Texas, the sum of \$310, when the reasonable expenses incurred and paid by the said Charles Swayne for travel and attendance did not amount to the sum of \$10 per diem.

Wherefore the said Charles Swayne, judge as aforesaid, misbehaved himself and was and is guilty of a high crime, to wit, the crime of obtaining money from the United States by a false pretense, and of a high misdemeanor in office.

The PRESIDING OFFICER. Senators, how say you, is the respondent, Charles Swayne, guilty or not guilty as charged in this article? The Secretary will proceed to call the roll for the responses of Senators.

The Secretary called the roll, and it resulted as follows:

Guilty—Bacon, Bailey, Bard, Bate, Berry, Blackburn, Carmack, Clark, Cockrell, Culberson, Daniel, Foster, of Louisiana, Gorman, Kittredge, Latimer, McCreary, McCumber, McEnery, McLaurin, Mallory, Martin, Money, Morgan, Nelson, Newlands, Overman, Patterson, Pettus, Simmons, Stone, Tallaferro, Teller—32.

Not guilty—Alger, Allee, Allison, Ankeny, Ball, Beveridge, Burnham, Burrows, Clapp, Clark of Montana, Clark of Wyoming, Crane, Cullom, Depew, Dick, Dietrich, Dillingham, Dolliver, Dryden, Dubois, Elkins, Fairbanks, Foraker, Foster of Washington, Frye, Fulton, Gallinger, Gamble, Gibson, Hale, Hansbrough, Heyburn, Hopkins, Kean,

Kearns, Lodge, Long, McComas, Millard, Penrose, Perkins, Platt of Connecticut, Platt of New York, Proctor, Quarles, Scott, Smoot, Spooner, Stewart, Warren—50.

Absent or not voting—Clarke of Arkansas, Knox, Wetmore—3.

The PRESIDING OFFICER. Senators, upon the second article of impeachment 32 Senators have voted "guilty" and 50 Senators have voted "not guilty." Less than two-thirds of the Senators present having voted "guilty," Charles Swayne, the respondent, stands acquitted of the charges contained in said second article. The Secretary will read the third article.

The Secretary read the third article, as follows:

ART. 3. That the said Charles Swayne, having been duly appointed, confirmed, and commissioned as judge of the United States in and for the northern district of Florida, entered upon the duties of his office, and while in the exercise of his office of judge as aforesaid was entitled by law to be paid his reasonable expenses for travel and attendance when lawfully directed to hold court outside of the northern district of Florida, not to exceed \$10 per diem, to be paid upon his certificate by the United States marshal of the district in which the court was held, and was forbidden by law to receive any compensation for such services. Yet the said Charles Swayne, well knowing these provisions, falsely certified that his reasonable expenses for travel in going to and coming from and attendance were \$10 per diem while holding court at Tyler, Tex., thirty-five days from January 12, 1903, and six days going to and returning from said Tyler, Tex., and received therefor from the Treasury of the United States, by the hand of A. J. Houston, the United States marshal for the eastern district of Texas, the sum of \$410, when the reasonable expenses of the said Charles Swayne incurred and paid by him during said period were much less than said sum.

Wherefore the said Charles Swayne, judge as aforesaid, misbehaved himself and was and is guilty of a high crime, to wit, obtaining money from the United States by a false pretense, and of a high misdemeanor in office.

The PRESIDING OFFICER. Senators, how say you, is the respondent, Charles Swayne, guilty or not guilty as charged in this article? The Secretary will proceed to call the roll for the responses of Senators.

The Secretary called the roll, and it resulted as follows:

Guilty—Bacon, Bailey, Bard, Bate, Berry, Blackburn, Carmack, Clay, Cockrell, Culberson, Daniel, Foster of Louisiana, Gorman, Kittredge, Latimer, McCreary, McCumber, McEnery, McLaurin, Mallory, Martin, Money, Morgan, Nelson, Newlands, Overman, Patterson, Pettus, Simmons, Stone, Taliaferro, and Teller—32.

Not guilty—Alger, Allee, Allison, Ankeny, Ball, Beveridge, Burnham, Burrows, Clapp, Clark of Montana, Clark of Wyoming, Crane, Cullom, Depew, Dick, Dietrich, Dillingham, Dolliver, Dryden, Dubois, Elkins, Fairbanks, Foraker, Foster of Washington, Frye, Fulton, Gallingier, Gamble, Gibson, Hale, Hansbrough, Heyburn, Hopkins, Kean, Kearns, Lodge, Long, McComas, Millard, Penrose, Perkins, Platt of Connecticut, Platt of New York, Proctor, Quarles, Scott, Smoot, Spooner, Stewart, Warren—50.

Absent or not voting—Clark of Arkansas, Knox, Wetmore—3.

The PRESIDING OFFICER. Senators, upon the third article of impeachment 32 Senators have voted "guilty" and 50 Senators have voted "not guilty." Less than two-thirds of the Senators present having voted "guilty," Charles Swayne, the respondent, stands acquitted of the charges contained in said third article. The Secretary will read the fourth article.

The Secretary read article 4, as follows:

ART. 4. That the said Charles Swayne, having been duly appointed, confirmed, and commissioned as judge of the United States in and for the northern district of

Florida, entered upon the duties of his office, and while in the exercise of his office of judge as aforesaid, heretofore, to wit, A. D. 1893, did unlawfully appropriate to his own use, without making compensation to the owner, a certain railroad car belonging to the Jacksonville, Tampa and Key West Railroad Company for the purpose of transporting himself, his family, and friends from Guyencourt, in the State of Delaware, to Jacksonville, Fla., the said railroad company being at the time in the possession of a receiver appointed by said Charles Swayne, judge as aforesaid, on the petition of creditors.

The said car was supplied with provisions by the said receiver, which were consumed by said Swayne and his friends, and was provided with a conductor or porter at the cost and expense of said railroad company, and with transportation over connecting lines. The expenses of the trip were paid by the said receiver out of the funds of the said Jacksonville, Tampa and Key West Railroad Company, and the said Charles Swayne, acting as judge, allowed the credit claimed by the said receiver for and on account of the said expenditure as a part of the necessary expenses of operating said road. The said Charles Swayne, judge as aforesaid, used the said property without making compensation to the owner, and under a claim of right, for the reason that the same was in the hands of a receiver appointed by him.

Wherefore the said Charles Swayne, judge as aforesaid, was and is guilty of an abuse of judicial power and of a high misdemeanor in office.

The PRESIDING OFFICER. Senators, how say you, is the respondent, Charles Swayne, guilty or not guilty as charged in this article? The Secretary will proceed to call the roll for the responses of Senators.

The Secretary called the roll, and it resulted as follows:

Guilty—Bailey, Berry, Blackburn, Carmack, Cockrell, Culberson, Daniel, McLaurin, Martin, Money, Morgan, Newlands, and Pettus—13.

Not guilty—Alger, Allee, Allison, Ankeny, Bacon, Ball, Bard, Bate, Beveridge, Burnham, Burrows, Clapp, Clark of Montana, Clark of Wyoming, Clay, Crane, Cullom, Depew, Dick, Dietrich, Dillingham, Dolliver, Dryden, Dubois, Elkins, Fairbanks, Foraker, Foster of Louisiana, Foster of Washington, Frye, Fulton, Gallinger, Gamble, Gibson, Gorman, Hale, Hansbrough, Heyburn, Hopkins, Kean, Kearns, Kirtledge, Latimer, Lodge, Long, McComas, McCreary, McCumber, McEnery, Mallory, Millard, Nelson, Overman, Patterson, Penrose, Perkins, Platt of Connecticut, Platt of New York, Proctor, Quarles, Scott, Simmons, Smoot, Spooner, Stewart, Stone, Taliaferro, Teller, and Warren—69.

Absent or not voting—Clarke of Arkansas, Knox, and Wetmore—3.

The PRESIDING OFFICER. Senators, upon the fourth article of impeachment 13 Senators have voted "guilty" and 69 Senators have voted "not guilty." Less than two-thirds of the Senators present having voted "guilty," Charles Swayne, the respondent, stands acquitted of the charges contained in said fourth article. The Secretary will read the fifth article.

The Secretary read the fifth article, as follows:

ART. 5. That the said Charles Swayne was duly appointed, commissioned, and confirmed as judge of the United States in and for the northern district of Florida, and entered upon the duties of said office, and while in the exercise of his office of judge as aforesaid, heretofore, to wit, A. D. 1893, did unlawfully appropriate to his own use, without making compensation to the owner, a certain railroad car belonging to the Jacksonville, Tampa and Key West Railroad Company for the purpose of transporting himself, his family, and friends from Jacksonville, Fla., to California, said railroad company being at the time in the possession of a receiver appointed by the said Charles Swayne, judge as aforesaid, on the petition of creditors.

The car was supplied with some provisions by the said receiver, which were consumed by the said Swayne and his friends, and it was provided with a porter at the cost and expense of the railroad company, and also with transportation over connecting lines. The wages of said porter and the cost of said provisions were paid by the said receiver out of the funds of the Jacksonville, Tampa and Key West Railroad Company, and the said Charles Swayne, acting as judge as aforesaid, allowed the

credits claimed by the said receiver for and on account of the said expenditures as a part of the necessary expenses of operating the said railroad. The said Charles Swayne, judge as aforesaid, used the said property without making compensation to the owner under a claim of right, alleging that the same was in the hands of a receiver appointed by him and he, therefore, had a right to use the same.

Wherefore, the said Charles Swayne, judge as aforesaid, was and is guilty of an abuse of judicial power and of high misdemeanor in office.

The PRESIDING OFFICER. Senators, how say you, is the respondent, Charles Swayne, guilty or not guilty as charged in this article? The Secretary will proceed to call the roll for the responses of Senators.

The Secretary called the roll; and it resulted as follows:

Guilty—Bailey, Berry, Blackburn, Carmack, Cockrell, Culberson, Daniel, McLaurin, Martin, Money, Morgan, Newlands, Pettus—13.

Not guilty—Alger, Allee, Allison, Ankeny, Bacon, Ball, Bard, Bate, Beveridge, Burnham, Burrows, Clapp, Clark of Montana, Clark of Wyoming, Clay, Crane, Cullom, Depew, Dick, Dietrich, Dillingham, Dolliver, Dryden, Dubois, Elkins, Fairbanks, Foraker, Foster Louisiana, Foster of Washington, Frye, Fulton, Gallinger, Gamble, Gibson, Gorman, Hale, Hansbrough, Heyburn, Hopkins, Kean, Kearns, Kittredge, Latimer, Lodge, Long, McComas, McCreary, McCumber, McEnery, Mallory, Millard, Nelson, Overman, Patterson, Penrose, Perkins, Platt of Connecticut, Platt of New York, Proctor, Quarles, Scott, Simmons, Smoot, Spooner, Stewart, Stone, Taliaferro, Teller, Warren—69.

Absent or not voting—Clarke of Arkansas, Knox, Wetmore—3.

The PRESIDING OFFICER. Senators, upon the fifth article of impeachment, 13 Senators have voted "guilty" and 69 Senators have voted "not guilty." Less than two-thirds of the Senators present having voted "guilty," the respondent, Charles Swayne, stands acquitted of the charges in said fifth article. The Secretary will read the sixth article.

The Secretary read article 6, as follows:

ART. 6. That the said Charles Swayne, having been duly appointed and confirmed, was commissioned district judge of the United States in and for the northern district of Florida, on the 1st day of April, A. D. 1890, to serve during good behavior, and thereafter, to wit, on the 22d day of April, A. D. 1890 took the oath of office and assumed the duties of his appointment, and established his residence at the city of St. Augustine, in the State of Florida, which was at that time within the said northern district. That subsequently, by an act of Congress approved the 23d of July, A. D. 1894, the boundaries of the said northern district of Florida were changed, and the city of St. Augustine and contiguous territory were transferred to the southern district of Florida; whereupon it became and was the duty of the said Charles Swayne to change his residence and reside in the northern district of Florida and to comply with section 551 of the Revised Statutes of the United States, which provides that—

A district judge shall be appointed for each district, except in cases hereinafter provided. Every judge shall reside in the district for which he is appointed, and for offending against this provision shall be deemed guilty of a high misdemeanor.

Nevertheless the said Charles Swayne, judge as aforesaid, did not acquire a residence, and did not, within the intent and meaning of said act, reside in his said district, to wit, the northern district of Florida, from the 23d day of July, A. D. 1894, to the 1st day of October, A. D. 1900, a period of about six years.

Wherefore the said Charles Swayne, judge as aforesaid, willfully and knowingly violated the aforesaid law, and was and is guilty of a high misdemeanor in office.

The PRESIDING OFFICER. Senators, how say you, is the respondent, Charles Swayne, guilty or not guilty as charged in this article? The Secretary will proceed to call the roll for the responses of Senators.

The roll having been called, it resulted as follows:

Guilty—Bacon, Bailey, Bard, Bate, Berry, Blackburn, Carmack, Clark of Montana, Clay, Cockrell, Culberson, Daniel, Dubois, Foster of Louisiana, Gibson, Gorman, Latimer, McCreary, McEnery,

McLaurin, Mallory, Martin, Money, Morgan, Newlands, Overman, Patterson, Pettus, Simmons, Taliaferro, Teller—31.

Not guilty—Alger, Allee, Allison, Ankeny, Ball, Beveridge, Burnham, Burrows, Clapp, Clark of Wyoming, Crane, Cullum, Depew, Dick, Dietrich, Dillingham, Dolliver, Dryden, Elkins, Fairbanks, Foraker, Foster of Washington, Frye, Fulton, Gallinger, Gamble, Hale, Hansbrough, Heyburn, Hopkins, Kean, Kearns, Kittredge, Lodge, Long, McComas, McCumber, Millard, Nelson, Penrose, Perkins, Platt of Connecticut, Platt of New York, Proctor, Quarles, Scott, Smoot, Spooner, Stewart, Stone, Warren—51.

Absent or not voting—Clarke of Arkansas, Knox, Wetmore—3.

The PRESIDING OFFICER. Senators, upon article 6 of the articles of impeachment, 31 Senators have voted "guilty" and 51 Senators have voted "not guilty." Less than two-thirds of the Senators present having voted "guilty," Charles Swayne, the respondent, stands acquitted of the charges contained in said sixth article. The Secretary will read the seventh article.

The Secretary read article 7, as follows:

ART. 7. That the said Charles Swayne, having been duly appointed and confirmed, was commissioned district judge of the United States in and for the northern district of Florida on the 1st day of April, A. D. 1890, to serve during good behavior, and thereafter, to wit, on the 22d day of April, A. D. 1890, took the oath of office and assumed the duties of his appointment, and established his residence at the city of St. Augustine, in the State of Florida, which was at that time within the said northern district. That subsequently, by an act of Congress of the United States approved the 23d day of July, A. D. 1894, the boundaries of the said northern district of Florida were changed, and the city of St. Augustine, with the contiguous territory, was transferred to the southern district of Florida, whereupon it became and was the duty of the said Charles Swayne to change his residence and reside in the northern district of Florida, as defined by said act of Congress, and to comply with section 551 of the Revised Statutes of the United States, which provides that—

A district judge shall be appointed for each district, except in cases hereinafter provided. Every judge shall reside in the district for which he is appointed, and for offending against this provision shall be deemed guilty of a high misdemeanor.

Nevertheless, the said Charles Swayne, judge as aforesaid, totally disregarding his duty as aforesaid, did not acquire a residence, and within the intent and meaning of said act did not reside in his said district, to wit, the northern district of Florida, from the 23d day of July, A. D. 1894, to the 1st day January, A. D. 1903, a period of about nine years.

Wherefore the said Charles Swayne, judge as aforesaid, willfully and knowingly violated the aforesaid law, and was and is guilty of a high misdemeanor in office.

The PRESIDING OFFICER. Senators, how say you; is the respondent, Charles Swayne, guilty or not guilty as charged in this article? The Secretary will proceed to call the roll for the responses of Senators.

The roll having been called, resulted as follows:

Guilty—Bate, Berry, Blackburn, Carmack, Clark of Montana, Cockrell, Daniel, Dubois, Gibson, Latimer, McCreary, McEnery, McLaurin, Mallory, Martin, Money, Morgan, Pettus, Taliaferro—19.

Not guilty—Alger, Allee, Allison, Ankeny, Bacon, Bailey, Ball, Bard, Beveridge, Burnham, Burrows, Clapp, Clark of Wyoming, Clay, Crane, Culberson, Cullom, Depew, Dick, Dietrich, Dillingham, Dolliver, Dryden, Elkins, Fairbanks, Foraker, Foster of Louisiana, Foster of Washington, Frye, Fulton, Gallinger, Gamble, Gorman, Hale, Hansbrough, Heyburn, Hopkins, Kean, Kearns, Kittredge, Lodge, Long, McComas, McCumber, Millard, Nelson, Newlands, Overman, Patterson, Penrose, Perkins, Platt of Connecticut, Platt of New York, Proctor, Quarles, Scott, Simmons, Smoot, Spooner, Stewart, Stone, Teller, Warren—63.

Absent or not voting—Clarke of Arkansas, Knox, Wetmore—3.

The PRESIDING OFFICER. Senators, upon the seventh article of impeachment, 19 Senators have voted "guilty" and 63 Senators have voted "not guilty." Less than two-thirds of the Senators present having voted "guilty," Charles Swayne, the respondent, stands acquitted of the charges contained in said seventh article.

The Secretary will read the eighth article.

The Secretary read article 8, as follows:

ART. 8. That the said Charles Swayne, having been appointed, confirmed, and duly commissioned as judge of the district court of the United States in and for the northern district of Florida, entered upon the duties of said office, and while in the exercise of his office as judge, as aforesaid, to wit, while performing the duties of a judge of a circuit court of the United States, heretofore, to wit, on the 12th day of November, A. D. 1901, at the city of Pensacola, in the county of Escambia, in the State of Florida, did maliciously and unlawfully adjudge guilty of a contempt of court and impose a fine of \$100 upon and commit to prison for a period of ten days E. T. Davis, an attorney and counselor at law, for an alleged contempt of the circuit court of the United States.

Wherefore the said Charles Swayne, judge as aforesaid, misbehaved himself in his office of judge, and was and is guilty of an abuse of judicial power and of a high misdemeanor in office.

The PRESIDING OFFICER. Senators, how say you, is the respondent, Charles Swayne, guilty or not guilty as charged in this article? The Secretary will proceed to call the roll for the responses of Senators.

The roll having been called, resulted as follows:

Guilty—Bacon, Bailey, Bate, Berry, Blackburn, Carmack, Clark of Montana, Clay, Cockrell, Culberson, Daniel, Dubois, Foster of Louisiana, Gorman, Hansbrough, Latimer, McCreary, McCumber, McEnery, McLaurin, Mallory, Martin, Money, Morgan, Newlands, Overman, Patterson, Pettus, Simmons, Taliaferro, Teller—31.

Not guilty—Alger, Allee, Allison, Ankeny, Ball, Bard, Beveridge, Burnham, Burrows, Clapp, Clark of Wyoming, Crane, Cullom, Depew, Dick, Dietrich, Dillingham, Dolliver, Dryden, Elkins, Fairbanks, Foraker, Foster of Washington, Frye, Fulton, Gallinger, Gamble, Gibson, Hale, Heyburn, Hopkins, Kean, Kearns, Kittredge, Lodge, Long, McComas, Millard, Nelson, Penrose, Perkins, Platt of Connecticut, Platt of New York, Proctor, Quarles, Scott, Smoot, Spooner, Stewart, Stone, Warren—51.

Absent or not voting—Clarke of Arkansas, Knox, Wetmore—3.

The PRESIDING OFFICER. Senators, upon the eighth article of impeachment 31 Senators have voted "guilty" and 51 Senators have voted "not guilty." Less than two-thirds of the Senators present having voted "guilty," Charles Swayne, the respondent, stands acquitted of the charges contained in said eighth article. The Secretary will read the ninth article.

The Secretary read article 9, as follows:

ART. 9. That the said Charles Swayne, having been appointed, confirmed, and duly commissioned as judge of the district court of the United States in and for the northern district of Florida, entered upon the duties of said office, and while in the exercise of his office as judge as aforesaid, to wit, while performing the duties of a judge of a circuit court of the United States heretofore, to wit, on the 12th day of November, A. D. 1901, at the city of Pensacola, in the county of Escambia, in the State of Florida, did knowingly and unlawfully adjudge guilty of a contempt of court and impose a fine of \$100 upon and commit to prison for a period of ten days E. T. Davis, an attorney and counselor at law, for an alleged contempt of the circuit court of the United States.

Wherefore the said Charles Swayne, judge as aforesaid, misbehaved himself in his office as judge and was and is guilty of an abuse of judicial power and of a high misdemeanor in office.

The PRESIDING OFFICER. Senators, how say you, is the respondent, Charles Swayne, guilty or not guilty as charged in this article? The Secretary will proceed to call the roll for the responses of Senators.

The roll having been called, resulted as follows:

Guilty—Bacon, Bailey, Bate, Berry, Blackburn, Carmack, Clark of Montana, Clay, Cockrell, Culberson, Daniel, Dubois, Foster of Louisiana, Gorman, Hansbrough, Latimer, McCreary, McCumber, McEnery, McLaurin, Mallory, Martin, Money, Morgan, Newlands, Overman, Patterson, Pettus, Simmons, Taliaferro, and Teller—31.

Not guilty—Alger, Allee, Allison, Ankeny, Ball, Bard, Beveridge, Burnham, Burrows, Clapp, Clark of Wyoming, Crane, Cullom, Depew, Dick, Dietrich, Dillingham, Dolliver, Dryden, Elkins, Fairbanks, Foraker, Foster of Washington, Frye, Fulton, Gallinger, Gamble, Gibson, Hale, Heyburn, Hopkins, Kean, Kearns, Kittredge, Lodge, Long, McComas, Millard, Nelson, Penrose, Perkins, Platt of Connecticut, Platt of New York, Proctor, Quarles, Scott, Smoot, Spooner, Stewart, Stone, and Warren—51.

Absent or not voting—Clarke, of Arkansas, Knox, and Wetmore—3.

The PRESIDING OFFICER. Senators, upon the ninth article of impeachment 31 Senators have voted "guilty," 51 Senators have voted "not guilty." Less than two-thirds of the Senators present having voted "guilty," Charles Swayne, the respondent, stands acquitted of the charges contained in said ninth article. The Secretary will read the tenth article.

The Secretary read article 10, as follows:

ART. 10. That the said Charles Swayne, having been appointed, confirmed and duly commissioned as judge of the district court of the United States in and for the northern district of Florida, entered upon the duties of said office, and while in the exercise of his office as judge as aforesaid, to wit, while performing the duties of a judge of a circuit court of the United States, heretofore, to wit, on the 12th day of November, A. D. 1901, at the city of Pensacola, in the county of Escambia, in the State of Florida, did maliciously and unlawfully adjudge guilty of a contempt of court and impose a fine of \$100 upon and commit to prison for a period of ten days Simeon Belden, an attorney and counselor at law, for an alleged contempt of the circuit court of the United States.

Wherefore the said Charles Swayne, judge as aforesaid, misbehaved himself in his office of judge and was and is guilty of an abuse of judicial power and of a high misdemeanor in office.

The PRESIDING OFFICER. Senators, how say you, is the respondent, Charles Swayne, guilty or not guilty as charged in this article? The Secretary will proceed to call the roll for the responses of Senators.

The roll having been called, it resulted as follows:

Guilty—Bacon, Bailey, Bate, Berry, Blackburn, Carmack, Clark of Montana, Clay, Cockrell, Culberson, Daniel, Dubois, Foster of Louisiana, Gorman, Hansbrough, Latimer, McCreary, McCumber, McEnery, McLaurin, Mallory, Martin, Money, Morgan, Newlands, Overman, Patterson, Pettus, Simmons, Taliaferro, Teller—31.

Not guilty—Alger, Allee, Allison, Ankeny, Ball, Bard, Beveridge, Burnham, Burrows, Clapp, Clark of Wyoming, Crane, Cullom, Depew, Dick, Dietrich, Dillingham, Dolliver, Dryden, Elkins, Fairbanks, Foraker, Foster of Washington, Frye, Fulton, Gallinger, Gamble, Gibson, Hale, Heyburn, Hopkins, Kean, Kearns, Kittredge, Lodge, Long, McComas, Millard, Nelson, Penrose, Perkins, Platt of Connecticut, Platt of New York, Proctor, Quarles, Scott, Smoot, Spooner, Stewart, Stone, Warren—51.

Absent or not voting—Clarke of Arkansas, Knox, Wetmore—3.

The PRESIDING OFFICER. Senators, upon the tenth article of impeachment 31 Senators have voted "guilty" and 51 Senators have voted "not guilty." Less than two-thirds of the Senators present having voted "guilty," Charles Swayne, the respondent, stands acquitted of the charges contained in said tenth article. The Secretary will read the eleventh article.

The Secretary read the eleventh article, as follows:

ART. 11. That the said Charles Swayne, having been appointed, confirmed, and duly commissioned as judge of the district court of the United States in and for the northern district of Florida, entered upon the duties of said office, and while in the exercise of his office as judge as aforesaid, to wit, while performing the duties of a circuit judge of the United States heretofore, to wit, on the 12th day of November, A. D. 1901, at the city of Pensacola, in the county of Escambia, in the State of Florida, did knowingly and unlawfully adjudge guilty of contempt of court and impose a fine of \$100 upon and commit to prison for a period of ten days Simeon Belden, an attorney and counselor at law, for an alleged contempt of the circuit court of the United States.

Wherefore the said Charles Swayne, judge as aforesaid, misbehaved himself in his office as judge and was and is guilty of an abuse of judicial power and of a high misdemeanor in office.

The PRESIDING OFFICER. Senators, how say you, is the respondent, Charles Swayne, guilty or not guilty as charged in this article? The Secretary will proceed to call the roll for the responses of Senators.

The roll having been called, it resulted as follows:

Guilty—Bacon, Bailey, Bate, Berry, Blackburn, Carmack, Clark of Montana, Clay, Cockrell, Culberson, Daniel, Dubois, Foster of Louisiana, Gorman, Hansbrough, Latimer, McCreary, McCumber, McEnery, McLaurin, Mallory, Martin, Money, Morgan, Newlands, Overman, Patterson, Pettus, Simmons, Taliaferro, and Teller—31.

Not guilty—Alger, Allee, Allison, Ankeny, Ball, Bard, Beveridge, Burnham, Burrows, Clapp, Clark of Wyoming, Crane, Cullom, Depew, Dick, Dietrich, Dillingham, Dolliver, Dryden, Elkins, Fairbanks, Foraker, Foster of Washington, Frye, Fulton, Gallinger, Gamble, Gibson, Hale, Heyburn, Hopkins, Kean, Kearns, Kittredge, Lodge, Long, McComas, Millard, Nelson, Penrose, Perkins, Platt of Connecticut, Platt of New York, Proctor, Quarles, Scott, Smoot, Spooner, Stewart, Stone, Warren—51.

Absent or not voting—Clarke of Arkansas, Knox, Wetmore—3.

The PRESIDING OFFICER. Senators, upon the eleventh article of impeachment 31 Senators have voted "guilty" and 51 Senators have voted "not guilty." Less than two-thirds of the Senators present having voted "guilty," Charles Swayne, the respondent, stands acquitted of the charges contained in said eleventh article. The Secretary will read the twelfth article.

The Secretary read the twelfth article, as follows:

ART. 12. That the said Charles Swayne, having been duly appointed, confirmed, and commissioned as judge of the United States in and for the northern district of Florida, entered upon the duties of his office, and while in the exercise of his office of judge, heretofore, to wit, on the 9th day of December, A. D. 1902, at Pensacola, in the county of Escambia, in the State of Florida, did unlawfully and knowingly adjudge guilty of contempt, and did commit to prison for the period of sixty days one W. C. O'Neal for an alleged contempt of the district court of the United States for the northern district of Florida.

Wherefore the said Charles Swayne, judge as aforesaid, misbehaved himself in his office of judge as aforesaid, and was and is guilty of an abuse of judicial power and of a high misdemeanor in office.

The PRESIDING OFFICER. Senators, how say you, is the respondent, Charles Swayne, guilty or not guilty as charged in this article? The Secretary will proceed to call the roll for the responses of Senators.

The roll having been called, it resulted as follows:

Guilty—Bacon, Bailey, Bard, Bate, Berry, Blackburn, Carmack, Clark of Montana, Clay, Cockrell, Culberson, Daniel, Dubois, Foster of Louisiana, Gorman, Hansbrough, Kittredge, Latimer, McCreary, McCumber, McEnery, McLaurin, Mallory, Martin, Money, Morgan, Nelson, Overman, Patterson, Pettus, Quarles, Simmons, Stone, Taliaferro, Teller—35.

Not guilty—Alger, Allee, Allison, Ankeny, Ball, Beveridge, Burnham, Burrows, Clapp, Clark of Wyoming, Crane, Cullom, Depew, Dick, Dietrich, Dillingham, Dolliver, Dryden, Elkins, Fairbanks, Foraker, Foster of Washington, Frye, Fulton, Gallinger, Gamble, Gibson, Hale, Heyburn, Hopkins, Kean, Kearns, Lodge, Long, McComas, Millard, Newlands, Penrose, Perkins, Platt of Connecticut, Platt of New York, Proctor, Scott, Smoot, Spooner, Stewart, Warren—47.

Absent or not voting—Clarke of Arkansas, Knox, Wetmore—3.

The PRESIDING OFFICER. Upon the twelfth article of impeachment 35 Senators have voted "guilty" and 47 Senators have voted "not guilty." Less than two-thirds of the Senators present having voted "guilty," Charles Swayne, the respondent, stands acquitted of the charges contained in said twelfth article.

The Presiding Officer, following the precedent in the Belknap impeachment case, calls the attention of the Senate to the twenty-second rule of procedure and practice in the trial of impeachments, which provides:

And if the impeachment shall not, upon any of the articles presented, be sustained by the votes of two-thirds of the members present, a judgment of acquittal shall be entered; but if the person accused in such articles of impeachment shall be convicted upon any of said articles by the votes of two-thirds of the members present, the Senate shall proceed to pronounce judgment, and a certified copy of such judgment shall be deposited in the office of the Secretary of State.

If there is no objection, the Presiding Officer will direct the Secretary to enter a judgment of acquittal according to the rule. The Chair hears no objection. The Secretary will read it.

The Secretary read as follows:

The Senate having tried Charles Swayne, judge of the district court of the United States for the northern district of Florida, upon twelve several articles of impeachment exhibited against him by the House of Representatives, and two-thirds of the Senators present not having found him guilty of the charges contained therein: It is therefore

Ordered and adjudged, That the said Charles Swayne be, and he is, acquitted of the charges in said articles made and set forth.

Mr. FAIRBANKS. Mr. President, I move that the Senate sitting for the trial of the impeachment of Charles Swayne adjourn without day.

The motion was agreed to; and (at 11 o'clock and 40 minutes a. m.) the Senate sitting upon the trial of the impeachment of Charles Swayne adjourned without day.

The managers on the part of the House, and the counsel for the respondent retired from the Chamber.

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